

## NOTICE OF FILING

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### Details of Filing

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Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 5/08/2022 8:41:34 PM AEST

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

Registrar

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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: **Elizabeth Hampton**  
Address: 175 Pitt Street Sydney NSW 2000  
Occupation: Deputy Commissioner, Office of the Australian Information Commissioner  
Date: 5 August 2022

### Contents

Document number	Details	Paragraph	Page
1	Affidavit of Elizabeth Hampton affirmed on 5 August 2022	1 – 49	1
2	<b>EH-1</b> OAIC annual report for the financial year ending 30 June 2017		14
3	<b>EH-2</b> OAIC annual report for the financial year ending 30 June 2018		226
4	<b>EH-3</b> OAIC annual report for the financial year ending 30 June 2019		438

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)

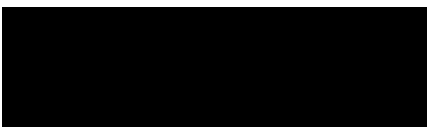
Document number	Details	Paragraph	Page
5	<b>EH-4</b> OAIC annual report for the financial year ending 30 June 2020		662
6	<b>EH-5</b> OAIC annual report for the financial year ending 30 June 2021		842

I **ELIZABETH HAMPTON**, of 175 Pitt Street Sydney NSW 2000, Deputy Commissioner, sincerely declare and affirm:

1. I am a Deputy Commissioner 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. I make this affidavit from my own knowledge unless otherwise stated. Where I depose to matters that I have been told by somebody else, I believe those matters to be true.
5. In this affidavit, I will describe the following:
  - (a) **Part A** – my background and roles at the OAIC;
  - (b) **Part B** – the structure and functions of the OAIC; and
  - (c) **Part C** – the resources available to the OAIC to perform its functions.

#### **Part A – Background**

6. I have been employed by the Australian Public Service (**APS**) since October 1994. I joined the Office of the Australian Information Commissioner (**OAIC**) in January 2019 in the role of Deputy Information Commissioner (**Deputy Commissioner**).
7. I held the role of Deputy Commission until August 2021. I then held the position of acting Freedom of Information Commissioner (**FOI Commissioner**) from August 2021 until April 2022. I resumed the role of Deputy Commissioner in April 2022 following the appointment of Leo Hardiman PSM QC as FOI Commissioner.



8. Prior to joining the OAIC, I held a number of positions at the Senior Executive Service level in other agencies and government instrumentalities that are part of the APS, including, most recently before I joined the OAIC, as First Assistant Secretary of the Department of Home Affairs.
9. In my role as Deputy Commissioner, I report directly to the Information Commissioner. The current Information Commissioner is Angelene Falk, who was appointed to that role in August 2018. The role of Deputy Commissioner is to assist the Information Commissioner to fulfill her statutory functions under the *Australian Information Commissioner Act 2010* (Cth) (**AIC Act**), including to:
  - (a) Provide strategic advice and management of the day-to-day operations of the OAIC.
  - (b) Acting as a delegate in respect of the Information Commissioner's statutory functions.
  - (c) Develop the capability and capacity of the OAIC to respond to new and emerging regulatory challenges through implementing effective systems, processes, and strategies.
  - (d) Provide effective governance, risk management and compliance with public sector requirements.
  - (e) Ensure effective external engagement and stakeholder relationships, including negotiations with government and business organisations.
  - (f) Represent the Information Commissioner and the OAIC in significant matters, before parliamentary committees, and other public and business forums.
  - (g) Undertake other duties as directed by the Commissioner.
10. In my previous role as the Acting FOI Commissioner, I was responsible for the delivery of the FOI functions, including the conduct of Information Commissioner reviews (**IC Reviews**) pursuant to Part VII of the *Freedom of Information Act 1982* (Cth) (**FOI Act**). Broadly, my role involved:
  - (a) overseeing the conduct of IC Reviews and making decisions pursuant to s 55K of the FOI Act;
  - (b) increasing the capability within the FOI branch (described in paragraph 15(c) below), including by reviewing systems, processes and reporting to improve the efficiency of the branch;
  - (c) establishing clear output expectations for teams or officers, and key areas of focus;
  - (d) engaging with regulated government departments and agencies in relation to information access; and



- (e) liaising with the Information Commissioner in relation to particular matters, including matters that raised novel legal issues.

## Part B – The OAIC

11. The establishment of the OAIC in November 2010 brought together in one agency the functions of the previous Privacy Commissioner and the Office of the Privacy Commissioner, and the new functions established by the amendment of the FOI Act in 2010.
12. The Information Commissioner is the head of the OAIC, an agency established by the AIC Act. The OAIC consists of the Information Commissioner, the FOI Commissioner and the Privacy Commissioner, and the staff engaged in accordance with Div 3 of Pt 3 of the AIC Act.
13. The OAIC is responsible for carrying out the “privacy functions” as defined in s 9 of the AIC Act, the “freedom of information functions” (or **FOI functions**), as defined in s 8 of the AIC Act and the “information commissioner functions”, as defined in s 7 of the AIC Act. The information commissioner functions are principally the Ministerial reporting and advisory functions of the Information Commissioner.
14. Angelene Falk was appointed as Information Commissioner and Privacy Commissioner on 16 August 2018. At that time, the office of FOI Commissioner was vacant and the Information Commissioner exercised the information commissioner functions, FOI functions and privacy functions. The office of FOI Commissioner was vacant from January 2015 until I was appointed to act as FOI Commissioner pursuant to s 21 of the AIC Act in August 2021. As already noted, Mr Leo Hardiman PSM QC commenced in the position of FOI Commissioner in April 2022.
15. The OAIC is comprised of the following four branches:
  - (a) Dispute Resolution branch, which is responsible for privacy dispute resolution, managing enquiries, resolving and investigating privacy complaints, privacy Commissioner initiated investigations (**CIIIs**) and their outcomes and administering the Notifiable Data Breaches scheme. The Dispute Resolution branch is led by the Assistant Commissioner (Dispute Resolution).
  - (b) Regulation and Strategy branch, which is responsible for providing strategic policy advice and guidance to individuals, government and business, the OAIC’s assessment (audit) program and the OAIC’s international strategy, developing regulatory and statutory instruments. Since 2019, the Regulation and Strategy branch has undertaken the OAIC’s functions in relation to the Consumer Data Right (**CDR**). This branch is led by the Assistant Commissioner (Regulation and Strategy).

- (c) FOI branch (previously known as the 'FOI Regulatory Group'), which is responsible for undertaking IC Reviews, monitoring, investigating and reporting on compliance through FOI complaints and Commissioner initiated FOI investigations, determining applications for vexatious applicant declarations and extensions of time, collecting information and statistics from agencies and ministers about FOI matters and providing advice and guidance on FOI and information access related matters. The FOI branch is led by the Assistant Commissioner (Freedom of Information).
- (d) Corporate branch, which includes legal services, strategic communications and corporate services and is led by the Assistant Commissioner (Corporate).

### **Privacy functions**

16. The OAIC's "privacy functions" are those conferred under Commonwealth legislation that concern the privacy of an individual, which include the functions conferred under the *Privacy Act 1988* (Cth) (**Privacy Act**), the *Crimes Act 1914* (Cth), the *Data-matching Program (Assistance and Tax) Act 1990* (Cth), the *National Health Act 1953* (Cth), the *My Health Records Act 2012* (Cth) (**My Health Records Act**), the *Healthcare Identifiers Act 2010* (Cth) and the *Telecommunications Act 1997* (Cth).
17. At the time of its establishment in 2010, the OAIC assumed the privacy functions that had previously been undertaken by the Privacy Commissioner and the Office of the Privacy Commissioner. Since 2010, a number of additional privacy functions have been conferred on the Information Commissioner. The significant statutory changes that have conferred additional privacy functions on the OAIC include:
  - (a) the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth), which commenced on 12 March 2014 and which amended the Privacy Act by (among other things) introducing:
    - i. the new Australian Privacy Principles (which replaced the "Information Privacy Principles" in effect);
    - ii. new provisions allowing for more comprehensive credit reporting (and greater investigation and enforcement power for the OAIC); and
    - iii. new provisions regarding the development and maintenance by the OAIC of codes of practice about information privacy and a code of practice for credit reporting;
  - (b) the My Health Records Act (formerly known as the "*Personally Controlled Electronic Health Records Act 2012* (Cth)"), which conferred functions on the OAIC with respect to the 'My Health Record' system, including investigating an act or practice that may

be an interference with the privacy of a healthcare recipient under the My Health Records Act;

- (c) the *Privacy Amendment (Notifiable Data Breaches) Act 2017* (Cth), which amended the Privacy Act by introducing new provisions to establish a statutory “Notifiable Data Breach” scheme (**NDB Scheme**) to be regulated by the OAIC as of 22 February 2018. The NDB Scheme requires an entity covered by the Privacy Act to notify affected individuals and the OAIC when a data breach is likely to result in serious harm to an individual whose personal information is involved; and
  - (d) the *Treasury Laws Amendment (Consumer Data Right) Act 2019* (Cth), which inserted a new Part IVD into the *Competition and Consumer Act 2010* (Cth) to establish the CDR. These new statutory provisions concern the rights of consumers and small to medium enterprises to access, and have control over, their data to readily enable transfer of data between service providers in designated sectors (so as to improve their ability to compare and switch between products and services). As of 13 August 2019, the OAIC became a co-regulator with the Australian Competition and Consumer Commission of the CDR, with the CDR commencing on 1 July 2020.
18. In addition, the OAIC has a memorandum of understanding with the Australian Capital Territory Government to provide privacy services to ACT public sector agencies, including responding to enquiries from the public about the *Information Privacy Act 2014* (ACT) and the Territory Privacy Principles scheduled to that Act.
  19. The OAIC’s privacy functions are largely undertaken by the Dispute Resolution and the Regulation and Strategy branches. These are the two largest branches of the OAIC in terms of the number of full-time equivalent (**FTE**) staff. As at the date of making this affidavit, the Dispute Resolution branch has the equivalent of approximately 37 FTE employees and the Regulation and Strategy branch has the equivalent of approximately 27 FTE employees.

### **FOI functions**

20. The AIC Act provides for the appointment of the FOI Commissioner, who has the FOI functions as defined in s 8. The FOI functions are also conferred on the Information Commissioner.
21. The OAIC’s FOI functions involve:
  - (a) conducting IC Reviews pursuant to Part VII of the FOI Act;
  - (b) assessing complaints under Part VIIB of the FOI Act in connection with actions taken by a government agency in the performance of its functions or the exercise of its



powers under the FOI Act, and undertaking investigations (including investigations of its own initiative);

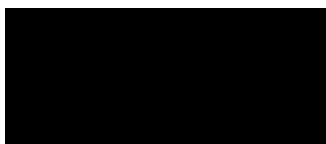
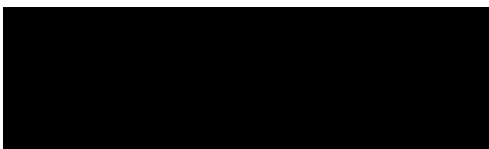
- (c) assessing and determining applications from Commonwealth agencies and Ministers for an extension of time to process a request for information made under Part III the FOI Act; and
  - (d) providing guidance and advice to individuals and Commonwealth agencies and Ministers about FOI rights and obligations (including publishing guidelines under the FOI Act and fact sheets, and hosting the Information Contact Officer Network (a network for Australian Government FOI practitioners) conference, which allow the OAIC to report and provide guidance on noticeable trends across its various functions, including its privacy functions).
22. The FOI branch is responsible for undertaking most of the office's FOI functions, however the OAIC's in-house legal team is responsible for managing requests for release of information by the OAIC pursuant to Part III of the FOI Act. These are not FOI functions conferred by the AIC Act, but rather the obligations that apply to most Commonwealth government agencies under the FOI Act.
23. As at the date of making this affidavit, the FOI branch has the equivalent of approximately 18 FTE staff and is led by the Assistant Commissioner (Freedom of Information). For the financial year ending 30 June 2020, the FOI branch had an average staffing level (**ASL**, which is an indicator of the average number of FTE employees over a period of time, excluding staff in a Senior Executive Service position) of 14 staff; for the financial year ending 30 June 2021, the FOI branch had an ASL of 19 staff.

#### IC Reviews

24. The process of conducting IC Reviews is outlined in Part 10 of the Guidelines published pursuant to the FOI Act (**FOI Guidelines**).
25. The IC Review process is intended to be informal and non-adversarial, and to enable timely resolution of IC Reviews. Since 1 July 2013, the OAIC has set itself a benchmark to resolve 80% of IC Review applications within 12 months of their receipt. However, the number of IC Reviews received by the OAIC increased by 15% or more in each of the 2018-19 (938 received), 2019-20 (1,066) and 2020-21 (1,224) financial years, and by 60% in the 2021-22 financial year (1,955); the number of IC Reviews received in the 2021-22 financial year is more than three times the number received in the 2016-17 financial year (632 applications received). The number of IC Reviews finalised by the OAIC has also increased over the past few financial years; 2018-19 (659 resolved);

2019-20 (829 resolved); 2020-21 (1,018 resolved); and 2021-22 financial year (1,380 resolved).

26. Despite significant increases over those years in the number of IC Reviews resolved, the OAIC was not able to meet the target of resolving 80% of IC Reviews within 12 months of their receipt for the 2018-19, 2019-20 and 2020-21 financial years, although it did meet the target in the 2021-22 financial year.
27. Statistics about the number of IC Reviews received and finalised each year are recorded in the annual reports of the OAIC. Now produced and shown to me and marked as:
  - (a) **EH-1** is a true copy of the annual report of the financial year ending 30 June 2017
  - (b) **EH-2** is a true copy of the annual report of the financial year ending 30 June 2018
  - (c) **EH-3** is a true copy of the annual report of the financial year ending 30 June 2019
  - (d) **EH-4** is a true copy of the annual report of the financial year ending 30 June 2020
  - (e) **EH-5** is a true copy of the annual report of the financial year ending 30 June 2021
28. Although the number of IC Reviews resolved each year has increased significantly, the rising number of applications received each year has resulted in an increasing number of IC Review applications which have been open for greater than 18 months. Data extracted from the OAIC's case management database indicates that in the 2016-17 financial year, there was only 1 IC Review that had been on foot for greater than 18 months, whereas by 2020-2021, there were 441 IC Reviews that had been open for greater than 18 months.
29. To address the increasing number of IC Review applications that are lodged with the OAIC each financial year, the OAIC has sought to refine the IC Review process and implement new measures over the past few financial years, with a view to resolving those applications as efficiently as possible. Changes to the IC Review process have included:
  - (a) changes to the process, templates and timeframes for managing review of 'deemed' decisions by agencies;
  - (b) increased automation of "smart forms" so that data populated into the forms are automatically populated into the OAIC's case management database, with automatic population of template letters sent by the OAIC to the parties;
  - (c) adjustments to clearance processes, with increased use of functions within the case management system and reduction in reliance on more manual arrangements;



- (d) further development of management information reporting through the reporting tool called "PowerBI", which automated, simplified and improved existing reporting from the office's case management system; and
  - (e) updated internal process documentation so that processes are clearly understood by staff.
30. In addition, the OAIC has sought to reduce the reliance on FOI processes by encouraging agencies and Ministers to proactively publish information of interest to the public, and provide 'self-service' portals through which individuals can access their own personal information. The OAIC has also assisted government departments and agencies by:
- (a) conducting training sessions with government agencies on how to efficiently address FOI requests;
  - (b) providing detailed guidance on the operation of the FOI regime (including conducting workshops to explain how exemptions to FOI requests operate and seeking extensions of time); and
  - (c) conducting information sessions for the Information Contact Officers Network to further develop capability within the FOI system and discuss emerging trends and issues.

#### FOI Complaints

31. Part VIIB of the FOI Act provides for the OAIC to receive and investigate complaints from members of the public regarding the manner in which a government agency handled a particular FOI request, or the agency's systems for processing and addressing FOI requests (**FOI Complaints**). Part 11 of the FOI Guidelines published by the OAIC outlines the circumstances in which it is appropriate for a person to make an FOI Complaint, rather than seek an IC Review in relation to a particular FOI request.
32. After receiving an FOI Complaint, the OAIC makes preliminary inquiries of the respondent agency to determine whether or not to investigate the complaint. Some FOI Complaints are withdrawn after the OAIC has made preliminary inquiries and provided information to the complainant. The Information Commissioner also has a discretion to decide not to investigate a complaint in the circumstances set out in s 73 of the FOI Act. If the Information Commissioner decides to commence an investigation, further information is sought to enable notice to be given to the respondent agency under s 86 of the FOI Act addressing the results of the investigation (as defined in s 87 of the FOI Act), the investigation recommendations (as defined in s 88 of the FOI Act) and the reasons for the investigation results and recommendations.

33. There are substantially fewer FOI Complaints than IC Reviews. FOI Complaints often raise issues such as an agency's failure to meet statutory timeframes or processes, or problems with consultation under practical refusal decisions. Over the past three financial years, the number of investigations that the OAIC completed as a result of FOI Complaints are as follows:

	FOI Complaints received	FOI Complaints finalised	FOI Complaints finalised following investigation
FY2019-20	109	71	27
FY2020-21	151	174	3
FY2021-22	214	223	42

#### FOI Commissioner Initiated Investigations

34. The Information Commissioner may initiate an investigation on her own motion under section 69(2) of the FOI Act in relation to an action taken by an agency in the performance of functions or the exercise of powers under the FOI Act.

#### Extension of time applications

35. With respect to FOI requests made to government agencies or Ministers under Part III of the FOI Act, the FOI Act requires:
- (a) the OAIC to be notified of agreements between the parties to an FOI request (being the party making the request for documents and the relevant government agency or Minister) to extend the timeframe for the agency to respond to the request (under section 15AA); and
  - (b) the OAIC to determine requests for extensions of time (**EOT**) made by the government agency or Minister, by either granting the application, granting an EOT with an amended timeframe, or refusing the application entirely (under section 15AB).
36. In addition to these, the OAIC is required to make a decision in relation to applications by agencies or Ministers pursuant to ss 15AC, 51DA and 54D of the FOI Act, and applications by an individual for an extension of time to make an IC Review application under Part VII of the FOI Act. Although the OAIC receives a large volume of EOT requests each year, processing and determination of the requests is generally straightforward and requires significantly less resources than the FOI branch's other functions.

### OAIC FOI Requests

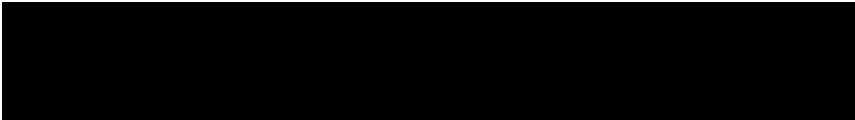
37. A person may request access to information from the OAIC pursuant to s 15 of the FOI Act.
38. The OAIC has been ranked among the top 20 government departments or agencies by number of FOI requests received each financial year for at least the financial years 2018-19, 2019-20 and 2020-21:
  - (a) in FY2018-19: the OAIC received 244 FOI requests;
  - (b) in FY2019-20: the OAIC received 232 FOI requests;
  - (c) in FY2020-21: the OAIC received 193 FOI requests; and
  - (d) in FY2021-22: the OAIC received 360 FOI requests.
39. As noted above, responding to requests for access to information held by the OAIC under Part III of the FOI Act is not performed by the FOI branch.

### **Part C – Resources**

40. The OAIC is an independent agency that is funded by the Commonwealth government through an annual appropriation as part of the Commonwealth Budget process.
41. The OAIC is required to deliver its functions with the funding allocated to it annually, and within the bounds of the ASL cap fixed for the agency as part of the Budget.
42. Each year the OAIC receives funding from the Commonwealth government which is not tied to a specific purpose or function, but is instead provided to enable the OAIC to perform its ongoing privacy, FOI and information commissioner functions generally. In this affidavit, this is described as 'base operating' funding. Additional funding may be received from the Commonwealth government for specific purposes or functions, which is described as specific funding.
43. The OAIC received ongoing base operating funding from the Commonwealth government in the amount of approximately \$8.2 million to \$8.4 million for the financial year ending 30 June 2017 through to the financial year ending 30 June 2019. The OAIC's ongoing base operating funding has increased to approximately \$9.5 million for the 2020 financial year through to the 2022 financial year as a result of certain specific funding relating to particular privacy functions having been re-allocated to the base operating funding allocation, with the relevant privacy functions becoming part of the ongoing functions of the OAIC.
44. The base operating funding is allocated across all of the branches of the OAIC to enable them to perform their various functions.



45. In addition to base operating funding, the OAIC has received funding as part of the annual Budget for a specific purpose or function.
46. Since the FY2018-19, the OAIC has received a number of funding allocations for the purpose of particular privacy functions. Although the total appropriated to the OAIC has accordingly increased since 2016-17, that primarily reflects grants of specific funding in that period for additional, specific privacy functions conferred on the OAIC.
47. Since 1 July 2016, the only specific funding allocated to the OAIC for its FOI functions was \$3.9 million over four years and ongoing (approximately \$1 million per year), which was allocated in the 2021-22 Budget for the appointment of an FOI Commissioner, one person at "SES 1" level, which is a role that is part of the OAIC's Executive) and two support staff. As a result of this additional funding, I was appointed acting FOI Commissioner in August 2021 and Mr Hardiman PSM QC commenced in the position of FOI Commissioner in April 2022. In addition, the funding permitted the appointment of an Assistant Commissioner (Freedom of Information), which is a new role that replaced the role previously performed by the Principal Director (FOI) with the addition of Executive functions, and two additional review advisers in the FOI branch to help manage IC Review applications.
48. Other than the specific funding allocated in the 2021-22 Commonwealth Budget for the appointment of an FOI Commissioner and three additional staff to assist with the FOI functions, since 1 July 2016 the OAIC has not received any increase in its funding (base or specific) to enable more staff to be allocated to undertake IC Reviews.



49. I have previously undertaken work to estimate the number of additional staff that the FOI branch would require in order to be able to respond to the increased number of IC Reviews received annually. In October 2019, I estimated that the OAIC would require an additional 9 FTE staff (in addition to the 19 FTE staff in the team at the time) to process the IC Reviews on hand at the time, and the number of IC Reviews that were expected to be received in the 2019-20 financial year, which I estimated to be the same as the number received in 2018-19 (928). In October 2020, based on an assumption that the number of IC Reviews received by the OAIC would continue to increase by 15% each year on the number received in the 2019-20 financial year, I estimated that the FOI branch would require a total of 35 FTE staff in the 2021-22 financial year and 28 FTE staff in the 2022-23 financial year to manage the existing caseload of IC Reviews on hand, as well as the number of IC Reviews expected to be received in the future over that period. The assumption that the number of IC Reviews received by the OAIC would continue to increase by 15% each year in 2021-22 and 2022-23 turned out to be inaccurate. In 2021-22, the OAIC received 1,955 IC Reviews, which was 60% more than the number received in the previous financial year.

Affirmed by the deponent  
at Canberra ACT  
on 5 August 2022

Before me:

TAMARA MORETTO

)  
)  
)  
)  
)

Signature of deponent

Signature of witness

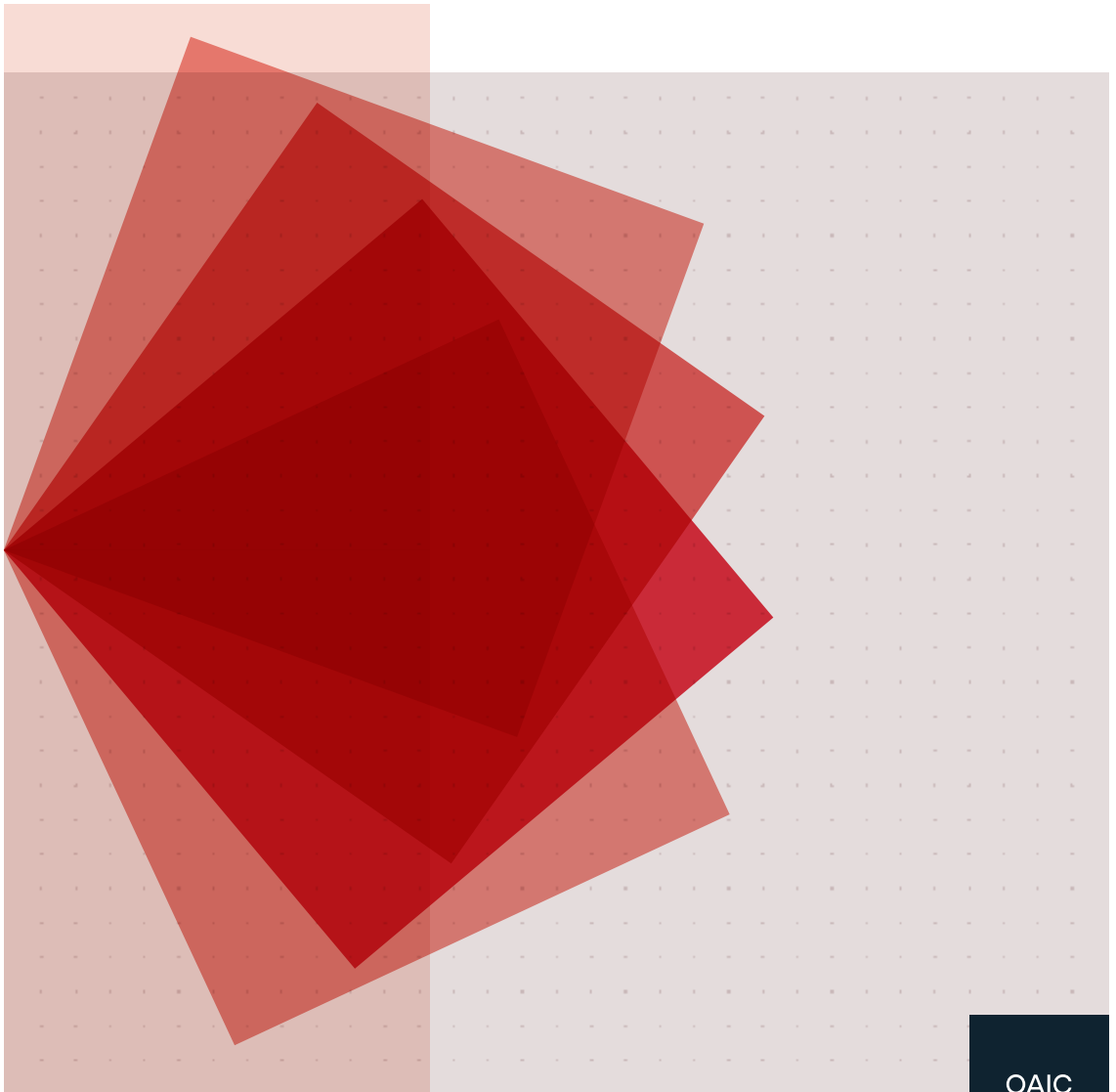
Solicitor



**Australian Government**  
**Office of the Australian  
Information Commissioner**

# Office of the Australian Information Commissioner

**Annual Report 2016–2017**



OAIC



# Office of the Australian Information Commissioner

**Annual Report 2016–2017**

ISSN 1839–5155

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### **Contact**

#### **Mail**

Director, Strategic Communications and Coordination  
Office of the Australian Information Commissioner GPO Box 5218  
SYDNEY NSW 2001

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**Website:** [www.oaic.gov.au](http://www.oaic.gov.au)

**Phone:** 1300 363 992

Our annual report is also available free of charge on our website at [www.oaic.gov.au/annualreport2016-17](http://www.oaic.gov.au/annualreport2016-17).

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Australian Government  
Office of the Australian Information Commissioner

Senator the Hon George Brandis QC  
Attorney-General  
Parliament House  
Canberra ACT 2600

Dear Attorney,

I am delighted to provide to you, for presentation to the Parliament, the Office of the Australian Information Commissioner's (OAIC's) Annual Report 2016–17 for the year ending 30 June 2017.

This report has been prepared for the purposes of section 46 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which requires that I prepare and provide an annual report to you for presentation to the Parliament.

Section 30 of the *Australian Information Commissioner Act 2010* (AIC Act) requires the Information Commissioner to prepare an annual report – under aforementioned section 46 of the *Public Governance, Performance and Accountability Act 2013* – on the OAIC's operations, including a report on freedom of information matters (defined in section 31 of the AIC Act) and privacy matters (defined in section 32 of the AIC Act).

The freedom of information matters include a summary of the data collected from Australian Government ministers and agencies in relation to activities under the *Freedom of Information Act 1982*.

I certify that the OAIC has prepared a fraud risk assessment and fraud control plan. We also have a number of appropriate fraud prevention, detection, investigation, reporting and data collection mechanisms in place. The OAIC has taken all reasonable measures to minimise the incidence of fraud.

I certify that this report has been prepared in accordance with the *Public Governance, Performance and Accountability Amendments (Non-corporate Commonwealth Entity Annual Reporting) Rule 2016*.

Yours sincerely

Timothy Pilgrim PSM  
Australian Information Commissioner  
Australian Privacy Commissioner

19 September 2017

# Contents

Performance snapshot	6
About us	9
Purpose	10
Objectives	11
<b>Part 1 Overview</b>	<b>12</b>
Commissioner's review	14
Our year at a glance	18
Our environment	22
Who we are	23
Communication and collaboration	27
<b>Part 2 Performance</b>	<b>36</b>
Our performance statement	38
Analysis	55
Privacy	56
FOI	84
Develop the personal information management capabilities of Australian businesses and government agencies	96
<b>Part 3 Management and accountability</b>	<b>98</b>
Corporate governance	100
Human resources	102
Procurement	108
Other requirements	110



<b>Part 4 Financial statements</b>	<b>112</b>
<b>Part 5 Appendices</b>	<b>150</b>
Appendix A: Agency resource statement and resources for outcomes	152
Appendix B: Memoranda of understanding	155
Appendix C: Privacy statistics	158
Appendix D: FOI statistics	162
Appendix E: Acronyms and abbreviations	183
Appendix F: Correction of material errors	186
Appendix G: Index	187
Appendix H: Requirements	200
<b>Our priorities for the coming year</b>	<b>207</b>

## Performance snapshot

### 1 **Challenge 1:** Promote, uphold and shape Australian information privacy rights

Key achievements in 2016–17 included:

- Received 17% more privacy complaints than last year, closed a higher percentage than last year, and shortened the time taken to do so
- 100% of OAIC recommendations to entities to ensure compliance with the Privacy Act, were accepted or planned for action
- Growth in privacy awareness with 49% increase in Privacy Awareness Week partners, increase in membership of the Privacy Professionals' Network (PPN) from 169 to 1235 members, and received 40% more media enquiries
- Conducted the 2017 Australian Community Attitudes to Privacy Survey (ACAPS).

Refer to page 39 for a detailed report of the OAIC's performance against Challenge 1.

### 2 **Challenge 2:** Promote and uphold Australian information access rights

Key achievements in 2016–17 included:

- Received 24% more Information Commissioner (IC) reviews than last year
- Finalised 13% more IC reviews than last year, with 80% of IC reviews finalised without a formal decision having to be made (in line with our aim of encouraging agreement between the parties where possible)
- All FOI complaints finalised during the year were completed within 12 months of receipt
- Reissued key parts of the Guidelines issued under s 93A of the FOI Act.

Refer to page 50 for a detailed report of the OAIC's performance against Challenge 2.



## 3

### Challenge 3: Develop the personal information management capabilities of Australian businesses and government agencies

Key achievements in 2016–17 included:

- Initiated development of the Australian Public Service (APS) Privacy Governance Code
- Released the Privacy Impact Assessment (PIA) eLearning Program to improve skill and capability within Australian businesses and agencies.

Refer to page 54 for a detailed report of the OAIC's performance against Challenge 3.

## Analysis of performance against our purpose

The 2016–17 year was a period of consolidation for the OAIC. In particular we worked hard to implement the Government's decision to return all functions under the FOI Act to the OAIC.

We were effective in the reporting year in achieving our purpose of promoting and protecting the right of individuals to access government-held information and understand how it is used for public purposes; and to exercise choice and control over their personal information.

This is demonstrated by:

### **Challenge 1: Promote, uphold and shape Australian information privacy rights**

Out of the 20 performance criterion, the OAIC met 16 of the criterion targets.

### **Challenge 2: Promote and uphold Australian information access rights**

Out of the seven performance criterion, the OAIC met six of the criterion targets.

### **Challenge 3: Develop the personal information management capabilities of Australian businesses and government agencies**

Out of the two performance criterion, the OAIC met both of the criterion targets.

Out of a total of twenty-nine performance criterion (under our three main goals) we met the target for twenty-four of these criterion.

Further information is contained in the Performance statements on page 39.

## About us

The Office of the Australian Information Commissioner is an independent statutory agency within the Attorney General's portfolio, established under the *Australian Information Commissioner Act 2010* (AIC Act).

Our role is to meet the needs of the Australian community when it comes to the regulation of **privacy and freedom of information**.

We do this by:

- Ensuring proper handling of personal information in accordance with the *Privacy Act 1988* (Privacy Act) and other legislation
- Protecting the public's right of access to documents under the *Freedom of Information Act 1982* (FOI Act).

The head of the agency is the Australian Information Commissioner.

As of 30 June 2017, we had 74.37 full-time equivalent (FTE) staff, including ongoing and non-ongoing employees.



## Purpose

Our purpose is to promote and uphold information privacy and information access rights through organisational excellence.

We are successful when we:

- ✓ promote and uphold information privacy rights for individuals
- ✓ assist businesses and government agencies covered by the *Privacy Act 1988* to meet their privacy obligations while encouraging better privacy practice
- ✓ influence government policy makers to consider privacy and Freedom of Information (FOI) impacts when drafting legislation and new policy proposals
- ✓ undertake FOI regulatory functions under the *Freedom of Information Act 1982* in an efficient and timely manner
- ✓ assist businesses and government agencies improve their information management capabilities in relation to privacy and FOI.

# Objectives

The OAIC's objectives for 2016–17 were identified in our *Corporate Plan 2016–17*.

## Vision

Our vision is an Australia where government information is managed as a national resource and personal information is respected and protected.

## Stakeholders

We work proactively with government agencies, political and community leaders, researchers and academics, businesses and the Australian public to regulate and enforce Australia's privacy and freedom of information laws.

## Values

- Independent: We make decisions and provide advice that is impartial and objective.
- Innovative: We value innovation, creativity and continuous improvement.
- Proactive: We tailor our work to the challenging environment in information management and policy.
- Collaborative: We work constructively with Parliament, government agencies, private entities, interest groups and the public.
- Practical: We make decisions and give advice that is sensible and operative.
- Expert: We provide respected insights and leadership in privacy, FOI, information management and policy.

## Goals

- Promote, uphold and shape Australian information privacy rights
- Promote and uphold Australian information access rights
- Develop the personal information management capabilities of Australian businesses and government agencies.

1





Commissioner’s review	14
Our year at a glance	18
Our environment	22
Who we are	23
Communication and collaboration	27

**Part 1**  
Overview

## Commissioner's review



In last year's Annual Report I noted that after a period of reform, resulting in improved and more-efficient services, the OAIC was well placed to respond to the 2016–17 Budget announcement that we would continue as the national regulator of both the Privacy Act and FOI Act.

I expressed my belief that the OAIC would respond confidently and positively to this confirmation of our role in protecting and upholding these two important information rights for Australian communities — and I am delighted to report that this has indeed occurred.

In 2016–17 the OAIC moved into a new phase of the office's public role — adopting a more proactive and engaged approach to privacy and FOI regulation, ensuring that businesses and agencies are better placed to meet their responsibilities to communities.

Turning first to our privacy role; it's my observation that developments in technological, social, commercial and government service delivery environments continue to drive increasing community and professional interest in privacy and privacy governance.

In this year's Privacy Awareness Week the increase in community and business interest in privacy was evident. We had 369 businesses and agencies signing up to be Privacy Partners — a 49% increase on 2016 — and we had a more-than-tripling of mainstream media attention compared to 2016.

This shows just how privacy and data protection continue to be core, growing, consumer and community concerns.

Australians continue to be early-adopters of new technologies, many of which are reliant on personal information. But Australians also perceive greater risks in interacting with businesses online, and transparency is central to building their trust — as we found from the 2017 Australian Community Attitudes to Privacy Survey.

From the survey we learned that 83 per cent of Australians think that online environments are inherently more risky than offline, and 69 per cent of Australians said they are more concerned about their online privacy than they were five years ago. Significantly, 58 per cent of Australians have avoided a business because of privacy concerns and 44 per cent said they had chosen not to use a mobile app for the same reason.

These findings reinforce the view that a successful data-driven economy needs a strong foundation in privacy. That message is now as vital to the public sector as to private, as the Commonwealth seeks to build community trust for the future success of data, cyber and innovation agendas.

In this context, I am proud to have initiated the development of an Australian Public Service (APS) Privacy Governance Code, announced jointly with the Secretary of the Department of Prime Minister and Cabinet.

I, like many others, have long held the view that a single high standard for privacy governance across the APS is vital to gaining community support for important data sharing and innovation initiatives.

Australian Government agencies have a unique position in terms of their ability to collect and hold vast amounts of personal information, and so it is fair that they demonstrate the highest standards of personal information protection.

The Code, which comes into effect on 1 July 2018, will provide a clear outline to the Australian community on what they can expect from agencies handling their personal information. It will help build public trust and confidence in Government information-handling practices — by creating a clear, compulsory privacy standard across all of government.

In February this year, we saw the passage of the *Privacy Amendment (Notifiable Data Breaches) Act 2017*, establishing a Notifiable Data Breaches (NDB) scheme in Australia. The scheme, which comes into effect on 22 February 2018, reinforces organisational accountability for the valuable personal information they hold — ensuring individuals know when their personal information may have been disclosed, where this disclosure poses a risk to them.

I am pleased to note that the 2017 Community Attitudes Survey reveals 95%, or near universal, support for this proposition.

These two important measures — the Privacy Code and NDB Scheme — will jointly strengthen Australia's privacy governance in both public and private sectors — and represent the most significant updates to our national privacy regulation since 2014.

Accordingly, the OAIC has been taking a proactive approach to working with businesses and agencies to ensure confident and smooth implementations of both initiatives.

To reach professionals the OAIC has built the national Privacy Professionals' Network, rolling out a calendar of events that will include every Australian capital city; and actively engaging with the more than 1400 members from both the public and private sector throughout the year. Beyond the NDB scheme, we have also assisted businesses and agencies that will need to comply with the new European Union General Data Protection Regulation (GDPR) requirements.

To reach consumer and community interests, we have broadened the Consumer Privacy Network (CPN) to better reflect community needs — with groups representing the culturally and linguistically diverse (CALD) and young people.

Internationally, the OAIC was delighted to secure the 47<sup>th</sup> Asia Pacific Privacy Authorities (APPA) Forum, bringing together privacy authorities from the region.

Finally, as Australians understand privacy rights more and more they are increasingly likely to enforce them — so it is not surprising that complaints registered for resolution with our office have increased by 17% this year.

To help address this challenge within our resources the OAIC is trialling a new early resolution approach, using new processes for intake, referral and resolution of complaints. The first month of the trial saw a substantial increase in the number of matters successfully dealt with.

Next year marks 30 years since *The Privacy Act 1988* (Privacy Act) was passed. It is fair to say that the challenges of Australian privacy and data protection are vastly more complex than they were in 1988. But no matter how much our environment evolves, Australians' right to privacy remains as important as ever.

The same applies to their Freedom of Information rights, where Australian interest in the information that underpins government decisions continues to grow.

Consequently, the 2016–17 year was also a period of re-consolidation in respect of our FOI functions; as we worked to implement the Government's decision to return all functions under the FOI Act back to the OAIC.

During this same period, the Office experienced a 24% increase in Information Commissioner Review applications — resulting in the largest number of applications received by the Office since its establishment in November 2010.

We also improved our administration of FOI matters, increasing the number of reviews finalised by 13% compared to last year.

An observation I would like to offer here is that we continue to see that some 82% of FOI matters are dominated by requests from individuals to access their own information.

While I accept that in some cases there are complexities to these requests, many are straightforward, and involve individuals seeking their own personal information which they are also entitled to access under the Privacy Act in most cases.

So, it is in the interest, and the efficiency, of agencies to promote and support the right to access one's own personal information held by the agency and to handle these requests administratively where at all possible.

After all, in circumstances where access personal information held in the records of an agency is a right under both the Privacy Act and the FOI Act, we should be looking to reduce the workload on both our clients and our colleagues. I would also comment that we still have work to do in ensuring that the efficiency offered by default publication of uncontentious information requests is maximised. Accordingly, in line with our commitment to support government agencies in how they resolve FOI matters better, we have reviewed and reissued a number of FOI Guidelines about the operation of the Act and have commenced working on an FOI Regulatory action policy.

These actions are timely in light of the Government's release of Australia's first National Action Plan for the Open Government Partnership. The OAIC has long been an advocate for more open, accountable and responsive government. We welcome the opportunity to be part of Australia's participation in this global movement; and to our own role as a member of the Government's Open Government Forum, under the Action Plan.

It is therefore a busy time ahead for the OAIC on both the privacy and FOI fronts, and I would like to acknowledge the support of the OAIC's networks and stakeholders — including the many Commonwealth agencies that we advise and support to deliver whole-of-government initiatives.

I'd also like to thank the skilled and dedicated OAIC staff, who work hard to promote and uphold the privacy and information access rights of all Australians, and who support Australian businesses and agencies to do the same.

**Timothy Pilgrim PSM**

Australian Information and Privacy Commissioner

14 September 2017

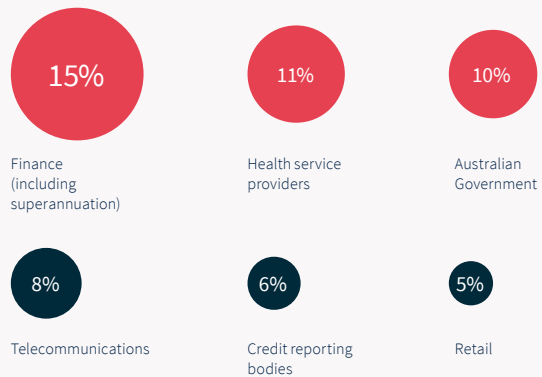


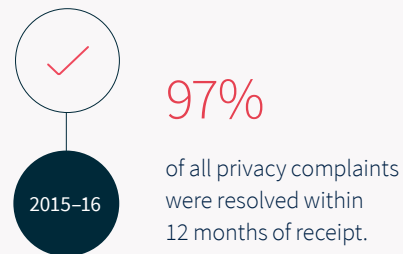
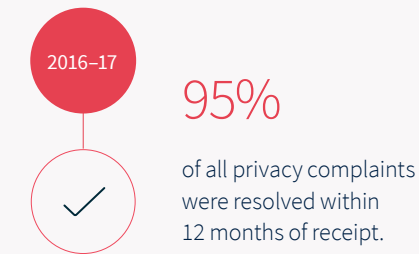
## Our year at a glance

### Privacy highlights



During the year, the majority of complaints came from the following sectors

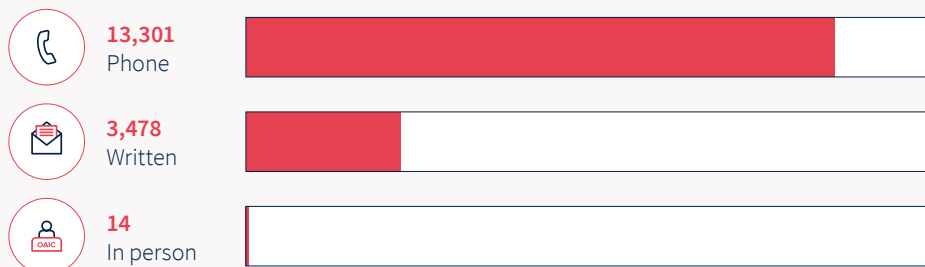




We handled

16,793

privacy enquiries which was a 12% decrease on last year.



## We received

114

voluntary data breach  
notifications

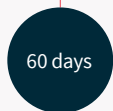
7%

a 7% increase on last  
year when we received

107

## Top five sectors

- 1 Australian Government
- 2 Finance (including superannuation)
- 3 Retail
- 4 Health service providers
- 5 Telecommunications

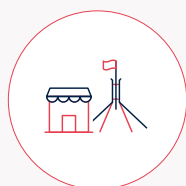


92%

of voluntary data breach  
notifications were closed  
within 60 days.

## We managed

35

mandatory data  
breach notifications  
(a 119% increase on  
last year).

## Partnered with

369 businesses and agencies

to promote Privacy Awareness Week 2017  
(an increase from 246 in 2015–2016 and 237 in 2014–2015).



## FOI highlights



We received

632

Information Commissioner  
reviews of FOI requests

373

2014–15

510

2015–16

632

2016–17

We finalised

86% of  
applications

for an Information  
Commissioner review  
within 12 months of receipt

We finalised **515** Information Commissioner reviews  
(a 13% increase compared to 2015–2016 when 454 were finalised)



100%

of FOI complaints finalised  
were completed within  
12 months of receipt.



Average time taken to  
close FOI complaints was

3 months

We handled

2,062

FOI enquiries which was  
a decrease on last year



1,454

Phone



599

Written



9

In person

## Our environment

The Australian economy is more information-driven than ever. Large and small companies are harnessing the power of ‘big data’ to discover even more detail about customer habits and trends. Technology has changed, and will continue to change, many of our everyday transactions.

This year Australia has seen a number of high profile privacy or cyber security incidents, which impact the public’s perceptions of the ability of organisations to handle personal information properly.

Against this climate, the Australian community are increasingly exercising their personal information rights. The number of privacy complaints made to the OAIC each year has increased by almost 150% over the last decade.

Equally, the findings from the 2017 Australian Community Attitudes to Privacy Survey showed how privacy and data protection continue to be of concern to consumers and reinforce the view that a successful data-driven economy needs a strong foundation in privacy.

Privacy governance in the both the public and private sectors will significantly strengthen next year with the implementation of the Australian Public Service (APS) Privacy Governance Code and the Notifiable Data Breaches (NDB) scheme, the planning for which we have commenced.

In addition, as the independent regulator for the privacy aspects of the My Health Record system, we have continued to work with the health sector as it prepares for the system to become opt-out by the end of 2018.

Of equal importance in our information-driven economy is Freedom of information — a vital pillar of open government.

Next year we will develop and publish an FOI regulatory action policy that outlines our approach to undertaking IC reviews, FOI complaints and Commissioner-initiated investigations.

The OAIC is also supporting progress against Australia’s Open Government National Action Plan 2016–2018. The Plan provides a road map for Australia’s participation in the Open Government Partnership (OGP), an international forum for reformers committed to making their governments more open, accountable, and responsive to citizens. These activities also align with Australia’s open data agenda, of which FOI is an integral part.

## Who we are

The OAIC is headed by the Australian Information Commissioner, a statutory officer appointed by the Governor-General. The Commissioner has a range of powers and responsibilities outlined in the *Australian Information Commissioner Act 2010* (AIC Act), and exercises powers under the FOI Act and Privacy Act.

The AIC Act provides for there to be a Privacy Commissioner and Freedom of Information Commissioner.

Timothy Pilgrim is the Australian Information Commissioner and Australian Privacy Commissioner. He reports to the Australian Parliament, through the Attorney-General.

As head of the agency, the Australian Information Commissioner is responsible for the strategic oversight and accountability for the agency's regulatory, strategic, advisory and dispute resolution functions, as well as its financial and governance reporting.

The Commissioner is supported by his principle adviser the Deputy Commissioner Angelene Falk who oversees the operation of the OAIC's services in both privacy protection and information access, and the corporate and communication functions.

Assistant Commissioner Andrew Solomon is responsible for the Dispute Resolution branch covering case management and resolution of privacy complaints and FOI reviews and complaints, Commissioner-initiated investigations; legal services and the public enquiries line.

Assistant Commissioner Melanie Drayton is responsible for the Regulation and Strategy branch which provides advice and guidance, examines and drafts submissions on proposed legislation, conducts assessments, and provides advice on inquiries and proposals that may have an impact on privacy.

Executive bios are on page 26

The OAIC staff are experts in their field. They share a deep commitment to ensuring the rights of Australians are protected when it comes to privacy and freedom of information.

*Australian Information Commissioner  
and Australian Privacy Commissioner*  
Timoth Pilgrim PSM

*Deputy Commissioner*  
Angelene Falk

*Dispute Resolution Branch*  
Assistant Commissioner  
Andrew Solomon

*Regulation and Strategy Branch*  
Assistant Commissioner  
Melanie Drayton

## Timothy Pilgrim PSM

In October 2016, Timothy was formally appointed the Australian Information Commissioner along with his responsibilities as Australian Privacy Commissioner. Timothy has been Australian Privacy Commissioner since 2010 and was Acting Australian Information Commissioner from 2015. Prior to this, Timothy was the Deputy Privacy Commissioner from 1998 to 2010. Before joining the Office of the Privacy Commissioner, Timothy held senior management positions in a range of Australian Government agencies, including the Small Business Program within the Australian Taxation Office and the Child Support Agency.

Timothy has made a significant contribution to the field of privacy in Australia. His achievements include involvement in developing the private sector provisions of the *Privacy Act 1988*, which included widespread consultation with community, business and government organisations. He also played a key role in implementing the private sector provisions, which took effect on 21 December 2001. More recently, Timothy has led the implementation of the 2014 reforms to the Privacy Act, the most significant reforms to the Act since its commencement. In doing so he worked closely with businesses, consumer groups and Australian Government agencies to build awareness of privacy rights and obligations, and ensure compliance with the new requirements.

Timothy has also worked at the international level to ensure that Australia is equipped to deal with global privacy challenges. He has played an important role in the implementation of the Asia-Pacific Economic Co-operation (APEC) Privacy Framework, which aims to promote a consistent approach to information privacy protection across APEC member economies. Timothy has also been closely involved in developing a framework for privacy regulators around the world to cooperate on cross-border enforcement matters.

He has extensive experience in corporate management, covering fields such as human resource management, industrial relations and parliamentary liaison. More broadly, at the corporate level he has been responsible for providing high level advice on strategies for implementing large scale cultural change.

Awarded a Public Service Medal in the 2015 Australia Day Honours List for 'outstanding public service in the development and implementation of major reforms to the *Privacy Act 1988*', Timothy holds a Bachelor of Arts degree from the University of Sydney.

## Angelene Falk

Prior to being appointed Deputy Commissioner, Angelene was the Assistant Commissioner of Regulation and Strategy at the OAIC. In this role she oversaw proactive privacy regulation including through Commissioner-initiated investigations, assessments of both public and private sector organisations and handled data breach notifications, many of which attract significant media attention.

Prior to her appointment to the former Office of the Privacy Commissioner in 2007, Angelene held positions with Boards and Commissions as lawyer, educator and policy adviser in the discrimination area. Protecting and promoting rights and responsibilities is an important priority for Angelene, one which she continues in her role today.

## Andrew Solomon

Andrew has held senior management positions in two Australian Government regulatory agencies, firstly as the NSW State Manager for the National Native Title Tribunal for seven years and for the past 11 years with the OAIC (formerly the Office of the Privacy Commissioner) — dealing with all functions of the office during that time.

## Melanie Drayton

Prior to being appointed Assistant Commissioner, Melanie held a variety of director level positions within the OAIC. Melanie's breadth of responsibilities has seen her work across privacy, freedom of information and information policy functions which included preparing guidance, drafting legislative instruments and promoting the requirements of the *Privacy Act 1988* and the *Freedom of Information Act 1982*. Prior to commencing her tenure at the OAIC, Melanie worked for the NSW government and community sector.



*Left to right: Melanie Drayton, Timothy Pilgrim, Angelene Falk and Andrew Solomon.*

## Communication and collaboration

This year we used a variety of different channels to raise awareness about privacy and freedom of information, engaging with businesses and agencies and the Australian public.

This section contains highlights of some of these activities, with other activities outlined in Chapter 2.

### Our networks

The OAIC hosts and participates in a number of domestic and international privacy networks which provide opportunities for organisations to meet, collaborate and share expertise.

#### Privacy Professionals' Network

This year there was a significant increase in public and private sector privacy professionals interested in joining the Privacy Professionals' Network (PPN) — membership increased from 169 to 1235 members. Approximately 70% of members are from the private sector, with the remainder from the public sector. Members have the opportunity to hear from experts, listen to case studies, and network with other members.

#### Consumer Privacy Network

The Consumer Privacy Network (CPN) assists the OAIC to further understand and respond to current privacy issues affecting consumers. Members are appointed for a two-year period. The full list of current members are:

- Australian Communications Consumer Action Network
- Australian Privacy Foundation
- Consumer Action Law Centre (CALC)
- Consumer Credit Law Centre SA (CCLCSA)
- Consumers Health Forum of Australia
- Electronic Frontiers Australia, Inc

- Financial Rights Legal Centre Inc (NSW)
- Internet Australia
- Legal Aid NSW
- Legal Aid Queensland
- The Foundation of Young Australians\*
- National LGBTI Health Alliance\*
- Federation of Communities' Councils of Australia\*
- National Mental Health Consumer and Carer Forum.\*

\* Became members during 2017–18.

## eNewsletters

We distributed 11 *OIACnet* eNewsletters to subscribers, 13 to PPN members and four to our Information Contact Officer Network (ICON) members — providing the latest news about our activities, publications and other relevant information.

## External Dispute Resolution schemes

The Information Commissioner can recognise external dispute resolution (EDR) schemes to handle particular privacy-related complaints (s 35A of the *Privacy Act 1988*).

The EDR schemes currently recognised are:

- Credit and Investments Ombudsman (CIO)
- Energy & Water Ombudsman NSW (EWON)
- Energy + Water Ombudsman Queensland (EWOQ)
- Energy & Water Ombudsman SA (EWOSA)
- Energy and Water Ombudsman Victoria (EWOV)
- Energy and Water Ombudsman Western Australia (EWOWA)
- Financial Ombudsman Service (FOS)
- Public Transport Ombudsman Victoria (PTO)
- Telecommunications Industry Ombudsman (TIO)
- Tolling Customer Ombudsman (TCO).



## External networks

### Privacy Authorities Australia

Privacy Authorities Australia is a group of Australian privacy authorities that meet regularly to promote best practice and consistency of privacy policies and laws. Membership includes the OAIC and privacy representatives from all states and territories.

### Asia Pacific Privacy Authorities

This is the principal forum for privacy authorities in the Asia Pacific region to form partnerships and exchange ideas about privacy regulation, new technologies and the management of privacy enquiries and complaints.

### Global Privacy Enforcement Network

The network is designed to facilitate cross-border cooperation in the enforcement of privacy laws. It builds on the Organisation for Economic Co-operation and Development's (OECD) *Recommendation on Privacy Law Enforcement Cooperation* (the Recommendation) (2007), which recognised the need for greater cooperation between privacy enforcement authorities on cross-border privacy matters.

### Asia-Pacific Economic Cooperation

The Asia-Pacific Economic Cooperation (APEC) administers a number of working groups including a working group focused on privacy, data transfers and digital interactions. We do not officially participate in any of APEC's working groups. However, we do monitor them regularly and assess the impacts on our operating landscape. We also regularly review opportunities to co-sponsor APEC projects and research.

We have also adopted and are participants in the APEC Cross-border Privacy Enforcement Arrangement (CPEA).

### International Conference of Data Protection and Privacy Commissioners

The largest and oldest network for data protection and privacy authorities, it brings together organisations from around the world.

### The Association of Access Information Commissioners

This Australian network is for information access authorities who administer FOI legislation.

### Common Thread Network

This network brings together data protection and privacy authorities from across the Commonwealth of nations.

## The International Conference of Information Commissioners

The international conference provides an opportunity for commissioners, practitioners and advocates to exchange ideas for the advancement of access to information.

## Events

As part of Privacy Awareness Week 2017, 132 privacy professionals attended the main industry event and over 50 people registered to attend the 'Growing up digital' event held in conjunction with the eSafety Commissioner.

We also held a number of PPN events this year across Australia, including a free public lecture in Perth on the modern day interactions between privacy governance, technology and trust and a Queensland University of Technology event to discuss the Mandatory Data Breach Notification Bill and EU General Data Protection Regulation (GDPR) scheme.

An additional focus for this year was a series of 'grass roots' community engagement events. For example we participated in Sydney Gay and Lesbian Mardi Gras Fair Day, promoting positive privacy practices to around 70,000 people.

This year, OAIC Executives gave a number of speeches to audiences from the public, private, community, health and education sectors, as well as an event targeting start-up businesses. We also spoke at international events for privacy professionals.



## Privacy Awareness Week 2017

Privacy Awareness Week (PAW) is an annual initiative of the Asia Pacific Privacy Authorities forum. It is held every year to promote and raise awareness of privacy issues and the importance of protecting personal information.

*It's encouraging to see that Australians are alert to privacy risks. But we need to convert awareness into action, and use the options already available to us to protect our personal information.*

Timothy Pilgrim PSM, Australian Information and Privacy Commissioner,  
in Media Release *Commissioner calls for action as privacy concerns grow* 15 May 2017

In 2017, the theme was 'trust and transparency', highlighting the consumer and community trust that flows to organisations who handle personal information transparently, and with care, throughout the information life cycle.

The community interest in privacy was high.

- 49 per cent increase in PAW partners — 369 compared to 246 in 2016
- Over 250 mainstream media mentions compared and 20+ broadcast media interviews — equating to 31 hours of airtime that was equal to \$250,000 worth of paid media content.

*While 61 per cent of us check website security, ... over 65 per cent of Australians do not read privacy policies, and half do not regularly adjust privacy settings on social media, or clear their browsing history... For businesses, these results show there is still work to do to make privacy easy for customers to manage. Those long-winded privacy notices and complex settings need to be replaced by clear language and point-in-time notifications.*

Timothy Pilgrim PSM, Australian Information and Privacy Commissioner,  
in Media Release *Commissioner calls for action as privacy concerns grow* 15 May 2017



## Australian Community Attitudes to Privacy Survey 2017

The OAIC's Australian Community Attitudes to Privacy Survey (ACAPS) is a longitudinal study into public awareness of, and concern about, privacy. The survey has been conducted in various forms since 1990 and was last undertaken in 2013.

Given the technological, social and consumer landscape in which our personal information is used, it is not surprising that the survey showed that Australians are increasingly concerned about the privacy risks that have evolved in tandem with new technology and new ways of connecting socially.

The survey revealed that 69 per cent of Australians say they feel more concerned about their online privacy than they did five years ago, and 83 per cent believe privacy risks are greater online than offline. Around one-in-four regret social media activity and a similar percentage knowing a victim of identity theft.

A striking message for the OAIC is that while privacy is increasingly of interest to Australian consumers and communities, many of us are not converting that interest into using basic privacy protections that are already available to us.

The full survey findings are on the OAIC website.

*'... our survey shows the majority of Australians have decided not to deal with a business due to privacy concerns.'*

Timothy Pilgrim PSM, Australian Information and Privacy Commissioner,  
in Media Release *Commissioner calls for action as privacy concerns grow* 15 May 2017

## Media

This year has seen a significant increase in community and media attention around our work, privacy and FOI. As seen in the ACAPS study, privacy is increasingly of interest from Australian consumers and communities, and several high profile privacy incidents have prompted Australians to reflect on how their information is protected.

In 2016–17 we adopted a strategic and proactive approach to disseminating information and raising awareness, resulting in a strong media presence across a variety of channels.

Media enquiries increased by 40 per cent (255 in 2016–17 compared to 181 in 2015–16). These have been from a mixture of mainstream, business and community publications.



## Social media



**Twitter**

**10% increase**  
in followers



**LinkedIn**

**28% increase**  
in followers



**Facebook**

**9.5% increase**  
in page likes



# 2





Our performance statement	38
Analysis	55
Privacy	56
FOI	84
Develop the personal information management capabilities of Australian businesses and government agencies	96

## Part 2

### Performance

# Our performance statement

## Introduction

I, Timothy Pilgrim, as the accountable authority of the Office of the Australian Information Commissioner, present the 2016–17 annual performance statements of the Office of the Australian Information Commissioner, as required under paragraph 39(1) (a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, these annual performance statements are based on properly maintained records, accurately reflect the performance of the entity, and comply with subsection 39(2) of the PGPA Act.

## Results

### Challenge 1: Promote, uphold and shape Australian information privacy rights

#### Activity 1: Handle privacy complaints

##### PERFORMANCE CRITERION

80% of privacy complaints finalised within 12 months.

Ensure the timeliness and quality of complaint resolution.

##### Criterion source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

##### Result against performance criterion

Target met:

- 95% of privacy complaints were finalised within 12 months of their receipt
- 22% increase in the number of complaints closed in 2016–17, compared to 2015–16 (2485 cf. 2038)
- Average time taken to close privacy complaints was 4.7 months

The OAIC ensured the quality of complaint resolution by:

- Handling privacy complaints in line with our *Privacy regulatory action policy* and *Guide to privacy regulatory action*
- Undertaking regular staff training including, in 2016–17, providing training with the assistance of external trainers on mental health and resilience, report and letter writing, conciliation, administrative law, investigations and interviewing techniques. Key staff also undertook Resolution Institute mediation training
- Encouraging staff to participate in complaints-handling networks and events, including the Complaint Handlers Information Sharing and Liaison seminars, the International Association of Privacy Professionals (iappANZ) conference, Privacy Awareness Week activities, investigations symposium, and the Australian Government Leadership Network conference
- Meeting regularly with staff to discuss matters of significance across the teams, and to ensure consistency of decision making.

The 'Resolving complaints' section on page 63 provides case studies that demonstrate the quality of our complaint resolution, and information about the initiatives we put in place in 2016–17 to ensure the continued timeliness of our complaints resolution.

## PERFORMANCE CRITERION

Resolve the majority of complaints by conciliation with both parties.

### Criterion source

Corporate Plan 2016–17

### Result against performance criterion

Target not met:

- 36% of complaints were closed on the basis that the respondent had adequately dealt with the matter.

The number of complaints resolved as ‘adequately dealt with’ reflects our aim of resolving privacy complaints through conciliation wherever possible. We encourage both parties involved in a complaint to play an active role in discussions and negotiations to try and reach a mutual agreement or outcome.

Where the OAIC considers it is reasonably possible that a complaint may be conciliated successfully, the *Privacy Act 1988* requires that there must be a reasonable attempt to conciliate (s40A(1)).

In 2016–17, all privacy staff in the OAIC’s Dispute Resolution branch received conciliation training. A number of staff also attended mediation training and are working towards accreditation as mediators with the Resolution Institute.

The ‘Resolving complaints’ section on page 63 contains more information about our approach to complaint resolution, including conciliation and other potential outcomes to complaints.

## PERFORMANCE CRITERION

Raise awareness about our complaints handling function.

### Criterion source

Corporate Plan 2016–17

### Result against performance criterion

Target met:

- Engaged with the media and the community on social media about the right to make a privacy complaint. Over 189 media and 242 social media mentions were achieved throughout the year
- Reached out to the community at public events, including Seniors’ Day at the Sydney Royal Easter Show, and at OAIC organised events held in Brisbane, Melbourne and Hobart
- Information provided to stakeholders who contacted our Enquiries Line
- Our ‘How do I make a privacy complaint?’ webpage was viewed 31% more times in 2016–17, compared to 2015–16.

The ‘Communication and collaboration’ (page 27), ‘Community and sector engagement’ (page 66) and ‘Reaching our audiences’ (page 81) sections provides more information about our work in this area.

## Activity 2: Conduct privacy assessments

### PERFORMANCE CRITERION

The median time for the completion of assessments is within 6 months.

#### Criterion source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

#### Result against performance criterion

Target not met:

- Median time taken to complete privacy assessments in 2016–17 was 7.1 months

In 2016–17, the OAIC focused its privacy assessments on open and transparent management of personal information and security of personal information. All of these assessments required a comprehensive and in-depth review of policy documents, interviews with staff and site inspection. As a result, the time taken to complete assessments in 2016–17 was longer than the planned performance target of six months, which generally anticipates a range of assessment complexity.

### PERFORMANCE CRITERION

Provide a professional, independent and systematic appraisal of how well government agencies and businesses comply with the Privacy Act.

#### Criterion source

Corporate Plan 2016–17

#### Result against performance criterion

Target met:

The OAIC undertook professional, independent and systematic assessments in line with our *Privacy regulatory action policy* and *Guide to privacy regulatory action*. We took a risk-based and proportionate approach to selecting assessment targets. Assessment staff collaborated, via regular meetings, training and information sharing, to ensure that assessment processes were consistent and predictable. Lessons learned from assessments and feedback from assessment targets were communicated back to the team to continually improve assessment processes in the future.

The 'Assessments' section on page 71 provides more detailed information about the outcomes of the OAIC's 2016–17 assessment program.

#### PERFORMANCE CRITERION

Entities change practices to ensure compliance with the Privacy Act.

##### Criterion source

Corporate Plan 2016–17

##### Result against performance criterion

Target met:

- 100% of recommendations were accepted or planned for action by assessment targets

Examples of how our assessments changed the practices of entities can be found in the 'Assessments' section on page 71.

#### PERFORMANCE CRITERION

Key learnings from assessments are incorporated into our guidance and educational materials.

##### Criterion source

Corporate Plan 2016–17

##### Result against performance criterion

Target met:

Assessment findings were communicated to stakeholders, including OAIC staff, through assessment reports. Where appropriate, these were also referenced in media releases published on the OAIC's website, and in speeches and presentations by OAIC Executive and staff.

Findings from assessments have been incorporated into our guidance materials where relevant.

### Activity 3: Conduct Commissioner-initiated investigations and handle voluntary and mandatory data breach notifications

#### PERFORMANCE CRITERIA

80% of Commissioner-initiated investigations (CIIs) are finalised within 8 months.

#### Criteria source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

#### Result against performance criteria

Target met:

- 84% of CIIs were finalised within 8 months

Despite the 70% increase in CII case numbers from the 2015–2016 financial year, the OAIC met its target, reflecting the OAIC's commitment to working with respondents to resolve issues of non-compliance and improve privacy practices. More information about CIIs is on page 70.

#### PERFORMANCE CRITERIA

80% of voluntary data breach notifications are processed or escalated to CII within 60 days.

#### Criteria source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

#### Result against performance criteria

Target met:

- 92% of voluntary data breach notifications were closed within 60 days

Despite the increase in voluntary data breach notifications from the 2015–2016 financial year, the OAIC met its target, reflecting the OAIC's focus on providing timely guidance to agencies and businesses that have experienced a data breach incident. More information about data breach notifications is available on page 68.

## PERFORMANCE CRITERIA

80% of mandatory digital health data breach notifications are processed or escalated to CII within 60 days.

### Criteria source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

### Result against performance criteria

Target not met:

- 54% of mandatory digital health data breach notifications were closed within 60 days.

All data breach notifications were risk-assessed upon receipt.

In 2016–17, there was a 118% increase in mandatory digital health data breach notifications received by the OAIC, compared to 2015–16. The OAIC, in consultation with the Australian Digital Health Agency and the Department of Human Services, has identified new methods for managing this increase.

## PERFORMANCE CRITERIA

Increase awareness about the voluntary data breach notification scheme with the OAIC.

### Criteria source

Corporate Plan 2016–17

### Result against performance criteria

Target met:

The number of reported voluntary data breaches increased 17% on the previous year.

The OAIC informed stakeholders about the voluntary data breach notification scheme through media releases and media statements, social media and information provided by our Enquiries line.

The OAIC's *Data breach notification — A guide to handling personal information security breaches* was viewed on our website 29% more times in 2016–17, compared to 2015–16.

The OAIC is now focusing its efforts on raising awareness of the new mandatory Notifiable Data Breaches scheme, which will commence on 22 February 2018.

See the 'Data breach notifications' section on page 68 for more information on these schemes.



## PERFORMANCE CRITERIA

Key learnings are incorporated into our guidance and educational materials.

### Criteria source

Corporate Plan 2016–17

### Result against performance criteria

Target met:

CII findings were communicated to stakeholders, including OAIC staff, through CII reports, enforceable undertakings and media releases published on the OAIC's website, and in speeches and presentations by OAIC Executive and staff.

## PERFORMANCE CRITERIA

Entities change practices and implement recommendations from enforceable undertakings and determinations.

### Criteria source

Corporate Plan 2016–17

### Result against performance criteria

Target met:

One CII respondent offered an enforceable undertaking in 2016–17. The enforceable undertaking set out steps that the respondent agreed to take to address the concerns raised by the OAIC in its CII. Implementation of these steps by the respondent led to changes in practices relating to information retention and an improvement in privacy policies and procedures.

The Information Commissioner did not make any CII determinations in 2016–17.

See the 'Commissioner-initiated investigations' section on page 70 for more information on the CII powers under the Privacy Act and the outcomes of the CIIs that the OAIC conducted in 2016–17.

#### Activity 4: Provide a public information service

##### PERFORMANCE CRITERION

90% of written enquiries are finalised within 10 working days.

##### Criterion source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

##### Result against performance criterion

Target not met:

- 78% of written enquiries were finalised within 10 working days.

While this represents an improvement on the 2015–16 response rate of 70% finalised within 10 working days, staff turnover and a change in procedures affected our ability to meet this target in 2016–17.

See the 'Enquiries' section on page 57 for more information.

Note: The published Portfolio Budget Statements 2016–17 noted 100% as the criteria but this was an oversight and revised in the Corporate Plan 2016–17.

##### PERFORMANCE CRITERION

Raise public awareness about our information services for privacy related matters.

##### Criterion source

Corporate Plan 2016–17

##### Result against performance criterion

Target met:

The OAIC promoted its information services for privacy related matters through outreach activities and community events, social media, in media statements and on our website. In 2016–17, this included attending Sydney Gay and Lesbian Mardi Gras Fair Day, Seniors' Day at the Sydney Royal Easter Show, Multicultural Expo at Erina, NSW and anti-poverty week.

Our privacy information services achieved over 2,156 media mentions and 552 social media mentions throughout the year.

## Activity 5: Assist businesses and agencies to improve their understanding of privacy compliance and promote privacy best practice

### PERFORMANCE CRITERIA

Key privacy resources are identified, developed and promoted for business, government and the community.

Consultations are undertaken with stakeholders on significant privacy resources.

### Criteria source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

### Result against performance criteria

Target met:

In 2016–17, the OAIC developed seven privacy resources for business and government, including a *What is personal information* guide, a Privacy Impact Assessment eLearning program and two videos highlighting the importance of privacy for start-up businesses. The OAIC consulted with stakeholders on these resources.

These resources were promoted through our Privacy Professionals' Network, the OAIC website and during Privacy Awareness Week.

See the 'Resources' section on page 78 for more information about these resources.

### PERFORMANCE CRITERIA

Proposed enactments and government programs are monitored for privacy impacts.

Advice is provided to government agencies and guidance to business on emerging privacy issues.

### Criteria source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

### Result against performance criteria

Target met:

The OAIC completed 15 submissions and issued 144 pieces of advice on privacy related topics.

See the 'Advice for businesses and agencies' section on page 76 for more information about these submissions and advices.

## Activity 6: Promote awareness and understanding of privacy rights in the community

### PERFORMANCE CRITERIA

Privacy Awareness Week campaign is held, with an increase in the number of participating private and public sector entities and an increase in wider community engagement.

#### Criteria source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

#### Result against performance criteria

Target met:

Privacy Awareness Week (PAW) was held from 14–20 May 2017. The number of PAW partners increased by 49% from 2016, with 369 private and public sector organisations signing up as partners. There were over 250 media mentions including 20 broadcast media interviews, which equated to 31 hours of airtime.

See the ‘Awareness’ section on page 81 for more information about the OAIC’s PAW activities.

### PERFORMANCE CRITERIA

Understand and respond to the needs of culturally and linguistically diverse (CALD) communities so we can assist and educate all Australians about their privacy rights.

#### Criteria source

Corporate Plan 2016–17

#### Result against performance criteria

Target met:

The OAIC continued to ensure a high quality of service for individuals from CALD communities.

The OAIC engaged in outreach activities that targeted CALD communities, including a multicultural expo and anti-poverty week where we distributed resources, interacted with CALD communities, and developed relationships with other organisations and agencies that deliver services to CALD communities.

We translated five of our resources and information materials into 11 languages for our website, and distributed these at our outreach events.

The OAIC welcomed the Federation of Ethnic Communities’ Councils of Australia as a member of the Consumer Privacy Network in September 2016.

The OAIC established a Diversity Committee which oversees the development and delivery actions against the Multicultural Access and Equity Plan.

The needs of CALD communities are considered at regular meetings of the OAIC’s Publications Forum.

## Activity 7: Develop legislative instruments

### PERFORMANCE CRITERIA

Applications for Public Interest Determinations and Australian Privacy Principle codes are considered.

Legislative instruments are appropriate and up-to-date.

### Criteria source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

### Result against performance criteria

Target met:

No applications for Public Interest Determinations or APP codes were received in 2016–17. General advice was provided on these processes.

On 18 May 2017, the Information Commissioner announced that the OAIC would develop an Australian Public Service (APS) Privacy Governance Code, in collaboration with the Department of Prime Minister & Cabinet. The Privacy Code will play a key role in building public trust in the APS, supporting the Australian Government's public data agenda and enhance privacy governance and capability.

Developing the Privacy Code and supporting materials for agencies will be a major project for the OAIC in 2017–18 in preparation for it coming into effect on 1 July 2018.

## Challenge two: Promote and uphold Australian information access rights

### Activity 1: Provide a timely and effective Information Commissioner review function

#### PERFORMANCE CRITERION

80% of Information Commissioner reviews are completed within 12 months.

Reduction of the number of matters over 12 months old.

Increase the number of matters finalised by informal resolution without proceeding to a decision.

Build on the existing jurisprudence which shapes the FOI jurisdiction.

#### Criterion source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

#### Result against performance criterion

Two of the three targets were met:

- 86% of applications for an Information Commissioner review were finalised within 12 months of receipt. (Target met)
- The matters over 12 months old increased from 14 to 18. This happened in the context of the significant increase in number of IC reviews received (632 applications in 2016–17 which is a 24% increase from 2015–16) (Target not met)
- There was an Increase in the number of matters finalised by informal resolution without proceeding to decision: 185 in 2015–16 and 238 in 2016–17. (Target met).
- Decisions by the Commissioner under s 55K of the FOI Act are published on the OAIC's website, referenced in Guidelines issued under s 93A of the FOI Act and publicised in our OAICnet and OAICicon newsletters.

See the 'Information Commissioner reviews section on page 85 for more information.

## Activity 2: Provide promotion and information to the Australian community on information access rights

### PERFORMANCE CRITERION

90% of written enquiries are finalised within 10 working days.

#### Criterion source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

#### Result against performance criterion

Target not met:

- 88% of written enquiries were finalised within 10 working days. Enquirers were notified of any delay at the time.

While this represents an improvement on the 2015–16 response rate of 85% finalised within 10 working days, staff turnover and a change in procedures affected our ability to meet this target in 2016–17.

Note: The published Portfolio Budget Statements 2016–17 noted 100% as the criteria but this was an oversight and revised in the Corporate Plan 2016–17.

### PERFORMANCE CRITERION

Raise public awareness about FOI rights and our information service.

#### Criterion source

Corporate Plan 2016–17

#### Result against performance criterion

Target met:

The OAIC raised awareness about FOI rights and our information service through outreach activities and community events such as Seniors Day at the Royal Easter Show, social media, in media statements and on our website. In 2016–17, this resulted in over 622 media mentions and 77 social media mentions of the OAIC's FOI information service.

See the 'Enquiries' section on page 85 for more information.

### Activity 3: Assist government agencies and ministers with FOI advice and maintain guidelines and resources to promote best practices

#### PERFORMANCE CRITERION

Key resources and guidelines under the FOI Act revised where necessary.

Consultations are undertaken with stakeholders where relevant.

Engage with government agencies and the public on FOI matters.

#### Criterion source

Corporate Plan 2016–17

#### Result against performance criterion

Target met:

In 2016–17, we met with various government agencies on a regular basis, and our Executive team delivered presentations at a number of conferences and meetings throughout the year.

The Information Commissioner reissued Parts 1, 2, 4–6 and 10–12 of the Guidelines under s 93A of the FOI Act which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act (FOI Guidelines).

See the 'Awareness' section on page 92 for more information about these activities.

#### PERFORMANCE CRITERION

Understand and respond to the needs of CALD communities so we can assist and educate all Australians about their FOI rights.

#### Criterion source

Corporate Plan 2016–17

#### Result against performance criterion

Target met:

The OAIC continued to ensure a high quality of service for individuals from CALD communities.

The OAIC engaged in outreach activities that targeted CALD communities, including a multicultural expo and anti-poverty week where we distributed resources, interacted with CALD communities, and developed relationships with other organisations and agencies that deliver services to CALD communities.

We translated four of our resources and information materials into 11 languages for the website and distributed these at our outreach events.

The OAIC established a Diversity Committee which oversees the development and delivery actions against the Multicultural Access and Equity Plan.

The needs of CALD communities are considered at regular meetings of the OAIC's Publications Forum.



## Activity 4: Handle FOI complaints and investigations

### PERFORMANCE CRITERION

80% of FOI complaints finalised within 12 months.

Ensure the timeliness and quality of complaint resolutions.

### Criterion source

Portfolio Budget Statements 2016–17: Program 1.1

Corporate Plan 2016–17

### Result against performance criterion

Target met:

- 100% of FOI complaints finalised during the year were completed within 12 months of receipt
- Average time taken to close FOI complaints was 3 months.

The OAIC ensured the quality of complaint resolution by:

- Handling FOI complaints in line with Part 11 of our FOI Guidelines
- Undertaking regular staff training including, in 2016–17, a managing unreasonable complainant behaviours course
- Encouraging staff to participate in complaints-handling networks and events, including the Complaint Handlers Information Sharing and Liaison seminars.

### PERFORMANCE CRITERION

Uphold the effectiveness of FOI processing within agencies.

### Criterion source

Corporate Plan 2016–17

### Result against performance criterion

Target met:

When we conduct IC reviews, investigate complaints and process extension of time applications we gain valuable insights into how agencies are processing FOI requests. As part of our functions, in particular, our complaint function, we provide advice and guidance to agencies about best practice FOI processing.

Part 3 of our *FOI Guidelines* assists agencies to effectively process FOI requests. We also provide ad hoc advice to agencies when contacted (agencies often approach case officers directly, rather than through enquiries).

In 2016–17, we did not undertake any Commissioner-initiated investigations.

### Challenge three: Develop the personal information management capabilities of Australian businesses and government agencies

#### Activity 1: Promote the relationship between strong privacy governance and improved business effectiveness

##### PERFORMANCE CRITERION

Develop advice, guidance and promotion on the business and government agency advantages of proactive privacy-by-design management approaches.

##### Criterion source

Corporate Plan 2016–17

##### Result against performance criterion

Target met:

The OAIC released a Privacy Impact Assessment (PIA) eLearning program during Privacy Awareness Week in May 2017. Undertaking a PIA for a new project or policy is a central part of ensuring a privacy-by-design approach. As of 30 June 2017, the course had been completed 167 times.

On 18 May 2017, the Australian Information and Privacy Commissioner announced that the OAIC would develop an Australian Public Service (APS) Privacy Governance Code. A key requirement of the Privacy Code is for Australian Government agencies to undertake a PIA for high risk projects. The OAIC will be developing guidance on this requirement in 2017–18.

The OAIC's Executive team delivered speeches at 22 privacy engagements aimed at businesses and government agencies.

## Activity 2: Assess education and training capacity and market demand

### PERFORMANCE CRITERION

Assess current gaps and risks in public and private sector knowledge of privacy management.

Develop business case analysis for the OAIC's engagement and service delivery to address known gaps or opportunities, including on a fee basis.

Determine forward programs for projects.

### Criterion source

Corporate Plan 2016–17

### Result against performance criterion

Target met:

In the second half of 2016–17, the OAIC focused on building the privacy management capability of the Australian Public Service. This included the announcement that the OAIC will develop an Australian Public Service (APS) Privacy Governance Code, for implementation on 1 July 2018.

As part of the OAIC's work to assist agencies to prepare for the Privacy Code, we surveyed learning and development professionals in agencies to determine what privacy training is currently undertaken by staff, and what further support and resources are required.

The OAIC has fed this feedback into its forward program of work for 2017–18.

## Analysis

As outlined in the Performance Statements, the OAIC had a total of twenty-nine performance criterion under our three main goals. We met the target for twenty-four of these criterion.

Overall, the OAIC achieved what we set out to do.

- We promoted, upheld and shaped Australian information privacy rights.
- We promoted and upheld Australian information access rights.
- We developed the personal information management capabilities of Australian businesses and government agencies.

We have provided a detailed analysis of our performance throughout the remainder of this chapter.

## Privacy

The *Privacy Act 1988* (Privacy Act) requires government agencies and private sector organisations to follow a set of rules when collecting, using and storing individuals' personal information.

Personal information is any information that is about an individual. The most obvious example is a name. Other examples include address, date of birth, photo of their face or even a record of opinion and views. Anything that is about an identifiable individual is personal information.

Whether it's filling in a form or using a digital device, government agencies and private sector organisations have to respect personal information.

The Privacy Act includes 13 Australian Privacy Principles (APPs) which set out standards for businesses and government agencies managing personal information.

## Australian Privacy Principles

APP 1 — Open and transparent management of personal information

APP 2 — Anonymity and pseudonymity

APP 3 — Collection of solicited personal information

APP 4 — Dealing with unsolicited personal information

APP 5 — Notification of the collection of personal information

APP 6 — Use or disclosure of personal information

APP 7 — Direct marketing

APP 8 — Cross-border disclosure of personal information

APP 9 — Adoption, use or disclosure of government related identifiers

APP 10 — Quality of personal information

APP 11 — Security of personal information

APP 12 — Access to personal information

APP 13 — Correction of personal information

## Enquiries

We provide information about privacy issues and privacy law to the public.

This year there was a 12% decrease in enquiries on the previous year. We answered 13,301 telephone calls and saw written enquiries decrease by 11% (3,478 in total). We assisted 14 in-person enquiries.

While enquiries have decreased, privacy complaints have increased by 17% (see page 59).

In the past the OAIC received a broad range of enquiries. This year, increased community awareness about privacy has meant the office is receiving less enquiries in total but they are now more specific to privacy and what is covered under the Privacy Act. In addition, in line with increased awareness, individuals are increasingly more comfortable with exercising their right to lodge a complaint.

Note: As a part of our MOU with the ACT Government we continued to provide privacy services to ACT public sector agencies including handling privacy complaints in relation to the Information Privacy Act 2014 and its Territory Privacy Principles (TPPs).

### Case study: Permitted health situations in relation to the disclosure of health information

An individual sought advice regarding their request to a private hospital for the release of information about their son, who was being treated for depression and has since gone missing.

The hospital refused to disclose that information to the individual on the grounds that it would be an interference with the son's privacy. The parents were not able to request access as they were not authorised to step into the shoes of the individual and exercise their privacy rights on their behalf (they did not hold any power of attorney).

We discussed the use or disclosure of personal information (APP 6) in the circumstances, and referred to s 16B which outlines the permitted health situations in relation to the disclosure of health information i.e. the disclosure of health information would be made to a responsible person (in this case, a parent) for the individual. We noted that s 16B would provide the hospital with the circumstances for when such a disclosure would be permitted.

We also advised the caller that they may wish to provide the OAIC's phone number to the hospital, should it wish to discuss APP 6 with us directly.

## Issues

In 2016–17 the most common privacy enquiries to our office were about the use and disclosure of someone's personal information (APP 6) followed by access (APP 12) and data security (APP 11).

**Table 1: Phone enquiries about the APPs**

ISSUES	NUMBER
APP 1 — Open and Transparent Management	76
APP 2 — Anonymity and Pseudonymity	27
APP 3 — Collection	1182
APP 4 — Unsolicited Personal Information	7
APP 5 — Notification of Collection	538
APP 6 — Use or Disclosure	1765
APP 7 — Direct Marketing	299
APP 8 — Cross-border Disclosure	88
APP 9 — Government Identifiers	6
APP 10 — Quality of Personal Information	108
APP 11 — Security of Personal Information	1214
APP 12 — Access to Personal Information	1362
APP 13 — Correction	153
APPs — Exemptions	960
APPs generally	1009

We also received a number of questions related to other privacy issues.

The table below categorises these enquiries.

**Table 2: Other privacy phone enquiries**

ISSUES	NUMBER OF CALLS
Credit reporting	889
Data breach notification	138
Data-matching	7
Healthcare Identifier	1
Information Privacy Principles	4
My Health Records (digital health)	5
National Privacy Principles	8
PPS Register	1
Privacy codes	1
Spent convictions	172
Tax file numbers	46
Territory Privacy Principles	30

## Complaints

In 2016–2017 we continued to provide an efficient complaints service, investigating complaints about acts or practices that may be an interference with an individual's privacy, as defined in the Privacy Act.

Generally, the OAIC receives complaints from individuals who are concerned an entity has mishandled their personal information. We aim to resolve complaints between the parties wherever possible, and continue to see strong outcomes for the parties from this process.

We investigate privacy complaints under the APPs, as well as matters relating to consumer credit reporting and registered APP codes. We also investigate the handling of other information such as tax file numbers, spent convictions, healthcare identifiers, student identifiers, and information used for data-matching.

In 2016–17, we received 2,494 privacy complaints, an increase of 17% on the previous year. This increase indicates a growing awareness of privacy issues and the role of the OAIC within the community.

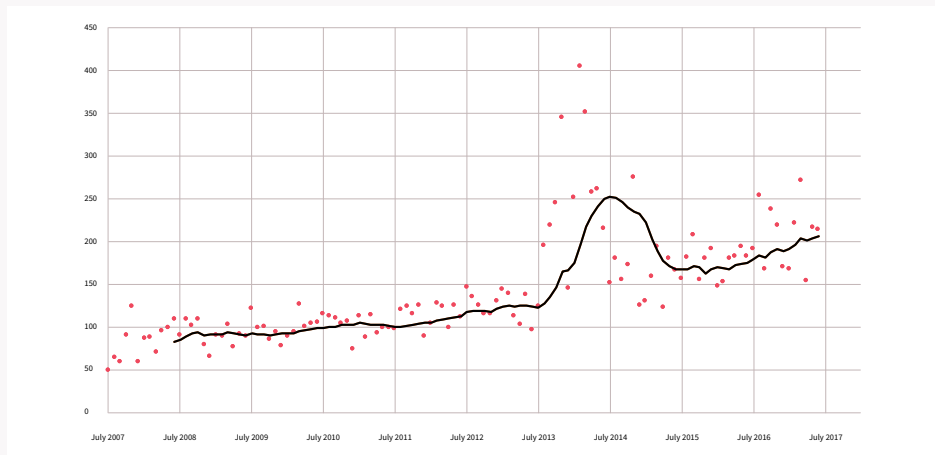
Despite the increase in complaints, the OAIC closed 2,485 complaints during the period, an overall improvement of 22% from 2015–16 when we closed 2,038 complaints.

Note: As a part of our MOU with the ACT Government we continued to provide privacy services to ACT public sector agencies including handling privacy complaints in relation to the Information Privacy Act 2014 and its Territory Privacy Principles (TPPs).

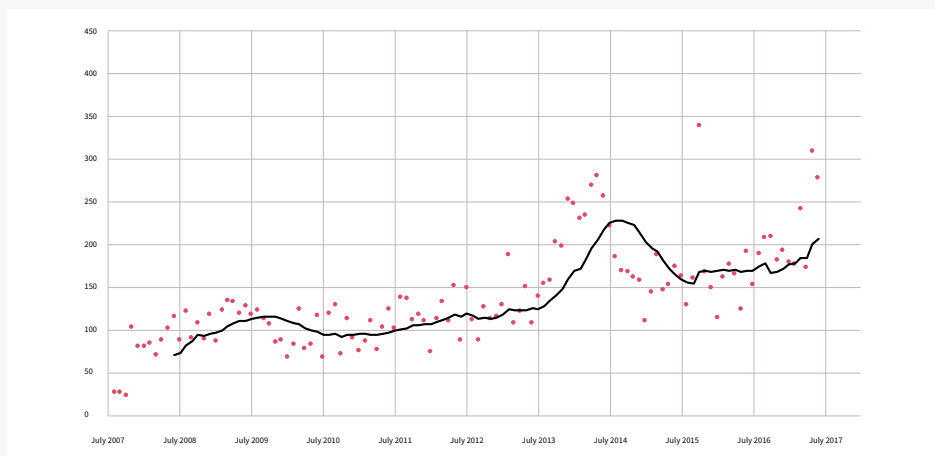
## The last decade

Over the last ten years we have seen a steady increase in the number of complaints received (see Figure 1). We expect this trend to continue, particularly with the introduction of the notifiable data breach scheme in 2018.

**Figure 1: Complaints received per month — July 2007 to present**



**Figure 2: Complaints closed per month - January 2007 to present**



\* Note that two large class complaints have been excluded from these graphs



## Issues

The overwhelming majority of privacy complaints we receive, 70.5%, are about the handling of personal information under the APPs.

The most common issues raised in complaints about the APPs were:

1. use and disclosure of personal information
2. security of personal information
3. access to personal information
4. collection of personal information
5. quality of personal information

In 2016–17, 16% of the complaints we received were about credit reporting. This is the lowest percentage of complaints about credit reporting since significant changes were made to the credit reporting provisions in the Privacy Act in 2014. This reflects the increased role of external dispute resolution schemes in resolving credit reporting complaints.

The trend of growing complaint numbers is no longer associated with a rise in credit related complaints, the reform of the Act, or an influx of larger multiple or class complaints. Rather, it indicates a growing trend of individuals being aware of their privacy rights, and exercising these rights.

More information is available in Appendix C.

## Sectors

Privacy complaints cover a broad range of sectors. In 2016–17, the top six sectors we received complaints about were:

1. Finance
2. Health service providers
3. Australian Government
4. Telecommunications
5. Credit reporting bodies
6. Retail

The table below shows the most commonly complained about sectors:

SECTOR	NUMBER OF COMPLAINTS
Finance (incl superannuation)	364
Health service providers	278
Australian Government	253
Telecommunications	204
Credit Reporting Bodies	147
Retail	129
Utilities	114
Online services	107
Insurance	94
Business/Professional Associations	88

### Case study: Disclosure by an insurance company

The complainant was involved in a car accident. The other driver engaged the respondent for insurance purposes.

The respondent attempted to contact the complainant about the accident. The complainant's mother answered the phone. The respondent disclosed the specifics of the accident to the complainant's mother, despite the respondent being aware that it was not speaking with the complainant.

The matter resolved by the complainant and the respondent entering into a deed of release, and the respondent paying \$1,500 compensation.

## Resolving complaints

In 2016–17, we improved the average time taken to close a complaint from 4.9 months in 2015–16, to 4.7 months in 2016–2017. During 2016–2017, 95% of all privacy complaints were resolved within 12 months of receipt. This is consistent with our result in 2015–2016 when 97% of our privacy complaints were resolved within 12 months.

The majority of privacy complaints continue to be closed on the basis that the respondent has not interfered with the individual's privacy, or the respondent has adequately dealt with the matter. Complaints resolved as 'adequately dealt with' are indicative of our overall aim to resolve complaints through conciliation.

We also have other grounds on which we may decline a complaint, including that there is no reasonable likelihood the complaint will be resolved by conciliation, and that no further investigation is warranted in the circumstances. These decline powers were introduced in 2014 to assist the OAIC in the exercise of its powers under the Act.

We continue to assist the parties to resolve matters, and provide staff with on-going training in conciliation and facilitated negotiation, so they can help guide both parties through our conciliation process. We encourage parties to play an active role in conciliation and to participate in joint discussions to try and reach a mutual agreement, which can result in greater satisfaction with our process for both parties.

More information is available in Appendix C.

### Case study: Improper collection of credit information

The complainant discovered that his former employer, the respondent, had accessed his credit file despite the complainant having no credit relationship with the respondent. The complainant was engaged in a legal dispute with the respondent at this time, and was concerned as to how the information obtained from his credit file might impact the dispute.

The respondent acknowledged that it did obtain information from the complainant's credit file for the purpose of dealing with the dispute, and that it should have obtained the information through other channels. The respondent had initially offered to apologise and change its procedures, but the complainant was not satisfied.

The complaint resolved through conciliation. The respondent agreed to provide \$1,000 in financial compensation and a written explanation of the events that occurred.

In 2016–17, we experienced a 17% increase in the number of privacy complaints we received. The OAIC team has explored creative solutions for reducing its response and processing times, in order to meet the challenge of rising complaint numbers.

For example, in the latter months of the reporting period, our privacy investigations team commenced piloting an early resolution scheme, which aims to bring the parties together at the early stages of our process, before party positions become entrenched.

This trial has reduced our initial response times and contributed to the increase in the number of privacy complaints closed, allowing us to meet the increase in the number of complaints received.

Outcomes achieved through conciliation often have a broader impact, delivering positive outcomes for not only the individual who brought the complaint to us, but for other individuals dealing with the same business or agency.

### Case study: Disclosure of TFN information

The complainant's accountant disclosed tax returns, including the complainant's tax file number (TFN) to the complainant's former partner. While the OAIC did not have jurisdiction over the respondent for the APP issues, we investigated the TFN matter, and found the respondent did not have appropriate steps in place to protect the complainant's TFN information.

The OAIC conciliated the complaint, and the parties agreed to settle the matter on the basis the respondent took specific steps to ensure the security of the complainant's personal information and provided \$5,000 compensation.

### Case study: Disclosure of information by a health service provider

The complainant attended group counselling sessions run by the respondent. The complainant alleged the respondent inappropriately collected their personal information during these group sessions, without the complainant's knowledge, and then disclosed this information to their former partner. The complaint resolved by conciliation. The respondent agreed to provide an apology, compensation of approximately \$5,000 and a refund of fees to resolve the matter. The respondent also made substantial changes to its practices in relation to the notification it provided to participants in such sessions.

### Case study: Access to personal information — medical records

The complainant requested access to their medical records held by the respondent, a medical centre. Six months elapsed between the complainant making this request and receiving the medical records. When the complainant received these records, they noted they were incomplete, and also appeared to include records of other individuals.

The OAIC made inquiries with the respondent, and it explained that at the time the complainant's request was made, it was transitioning to a new practice manager. The respondent apologised for its handling of the request, and provided further education and training to the staff involved about their privacy obligations. The respondent also implemented measures to ensure personal information is not inadvertently disclosed to the wrong patients. The OAIC provided the respondent with additional information about access to personal information (APP 12) to assist it to improve its practices. The complainant was satisfied with this outcome, and that the respondent had made changes to its processes to prevent an issue like this recurring.

## Community and sector engagement

An important part of our role is interacting with key industry and community stakeholders, including other Commonwealth and state government bodies and external dispute resolution schemes, about recurring or significant issues arising in complaints. In 2016–17 we attended a number of community outreach events promoting awareness of the privacy complaint functions of our office, and the ways in which individuals can access or protect their personal information.

We also worked on improving lines of communication with key respondents, particularly in the early resolution phase. We have successfully established a direct referral process with some key respondents. As a result, we have seen a number of matters resolving between the parties with minimal intervention by the OAIC. We will continue to expand these efforts in 2017–2018.

During the year we also increased media and social media coverage about our complaints handling function with targeted messaging around the complaints process.



## Determinations

Under section 52 of the Privacy Act, the Commissioner can make determinations on privacy complaints where conciliation during the complaints process had not resolved the matter. The Commissioner can also make determinations in relation to Commissioner-initiated investigations (CII).

This year, the Commissioner made nine determinations under the Privacy Act, two more than in any previous year. These determinations will have educational and precedent value for government agencies, business, the community and other key stakeholders.

For example, *'LS' and 'LT' (Privacy)* was the first determination about access to personal information since amendments to the Privacy Act commenced on 12 March 2014. This determination clarifies obligations under APP 12, access to personal information, and is of particular use to health service providers and individuals seeking access to medical records.

The first determination about fairness and lawfulness of the means of collection was made in *'LP' and The Westin Sydney (Privacy)* concerning APP 3.5.

*Financial Rights Legal Centre Inc. & Others and Veda Advantage Information Services and Solutions Ltd*, and *'KB' and Veda Advantage Information Services and Solutions Ltd*, are useful examples of the application of credit reporting reforms of 2014, including the *Privacy (Credit Reporting) Code 2014*.

Other determinations made in 2016–17, such as *'LB' and Comcare (Privacy)*, relate to the unauthorised disclosure of personal information and failure to take reasonable steps to protect personal information. The awards reflect the significant impact the mishandling of personal information can have on an individual in some circumstances.

A list of the OAIC's 2016–17 determinations are below. Links to the decisions are available on [www.oaic.gov.au/privacy-law/determinations](http://www.oaic.gov.au/privacy-law/determinations).

- *'LU' and Department of Defence (Privacy) [2017] AICmr 61 (26 June 2017)*
- *'LS' and 'LT' (Privacy) [2017] AICmr 60 (26 June 2017)*
- *'LP' and The Westin Sydney (Privacy) [2017] AICmr 53 (7 June 2017)*
- *'LB' and Comcare (Privacy) [2017] AICmr 28 (24 March 2017)*
- *'LA' and Department of Defence (Privacy) [2017] AICmr 25 (17 March 2017)*
- *Financial Rights Legal Centre Inc. & Others and Veda Advantage Information Services and Solutions Ltd [2016] AICmr 88 (9 December 2016)*
- *'KB' and Veda Advantage Information Services and Solutions Ltd [2016] AICmr 81 (25 November 2016)*
- *'KA' and Commonwealth Bank of Australia Limited [2016] AICmr 80 (25 November 2016)*
- *'JO' and Comcare [2016] AICmr 64 (21 September 2016)*

## Data breach notifications

In February 2017 the passing of the *Privacy Amendment (Notifiable Data Breaches) Act 2017* established a mandatory Notifiable Data Breaches (NDB) scheme that applies to agencies and businesses covered by the Privacy Act.

The NDB scheme reflects developments in the European Union, North America and the Asia Pacific, where privacy protections in many countries and provinces currently include, or propose to include mandatory data breach notification, so that individuals can take protective action in the event of a serious data breach.

From 22 February 2018, organisations covered by the Privacy Act will be required to notify individuals who are likely to be at risk of serious harm. The OAIC must also be notified. Our responsibilities under the NDB scheme include:

- Receiving notifications about data breaches.
- Promoting compliance with the scheme, including taking regulatory action in response to instances of non-compliance.
- Raising awareness about the NDB scheme among stakeholders and the broader community, about how the scheme strengthens the protection of personal information.

In May 2017 we commenced targeted consultation with key industry representatives (including the telecommunications, financial, insurance and health sectors) and Australian government agencies, to help develop our guidance about the NDB scheme. In June we released draft guidance for public consultation covering:

- Entities covered by the NDB scheme
- Identifying eligible data breaches
- Notifying individuals about an eligible data breach
- Australian Information Commissioner's role in the NDB scheme.

In the coming financial year we will develop further resources ahead of the scheme commencing on 22 February 2018.

We continued to administer a voluntary data breach notification scheme that allows businesses and agencies to self-report possible privacy breaches to the OAIC. We also administer a mandatory scheme for digital health data breaches. Further information on that scheme can be found in the digital health section of this report.

After receiving notifications, where appropriate, we consider each incident and provide best practice privacy advice to the organisation, encourage notifying affected individuals and provide assistance to individuals.



We assist organisations affected by a data breach to:

- 1. contain the data breach
- 2. reduce the impact of the data breach on affected individuals
- 3. minimise the risk of a similar incident happening again.

**Table 3: Voluntary data breach notifications and mandatory digital health data breach notifications**

YEAR	2014–15	2015–16	2016–17
Voluntary notifications	110	107	114
Mandatory notifications (digital health data)	7	16	35
<b>Total</b>	<b>117</b>	<b>123</b>	<b>149</b>

In 2016–2017, the number of reported data breaches continued to grow, with voluntary notifications up 29% on the previous year.

The increase in voluntary notifications can be explained, at least in part, by the OAIC raising awareness this year on the voluntary data breach notification scheme which encourages voluntary notification of affected individuals by entities that have experienced a data breach, and provides guidance on how to notify the OAIC of the issue.

**Case study: Personal information sent to third party**

In 2016 we received a voluntary data breach notification from the National Australia Bank (NAB) advising that, due to a coding error in its systems, emails containing individuals’ personal information were accidentally sent to a third party. The individuals affected had been dealing with NAB’s Migrant Banking team, and the recipient of the emails was a website hosted offshore.

The OAIC worked with the UK Information Commissioner’s Office in examining this matter. In response to this incident, NAB corrected its systems to contain the breach and prevent recurrence. It also notified affected individuals.

# Commissioner-initiated investigations

Section 40(2) of the Privacy Act enables an investigation of an incident that may be an interference with privacy to take place on the Commissioner’s own initiative. This power is used to investigate possible privacy breaches that have come to our attention other than by way of an individual privacy complaint.

Commissioner-initiated investigations (CIIs) are often conducted in response to significant community concern or discussion, formal referrals from other government agencies, or in response to notifications from third parties about potentially serious privacy problems. Our key objective in undertaking a CII is improving the privacy practices of investigated entities.

This year saw another increase in CII activity compared to previous years. We commenced an investigation or conducted preliminary inquiries in relation to 26 incidents. In some incidents, more than one respondent was identified which is reflected in the number of CIIs.

In considering a respondent’s information handling practices, procedures and systems that may have affected the likelihood and extent of a data breach, the Commissioner may decide to discontinue an investigation where he is satisfied that no breach has occurred, or if the breach has been adequately dealt with by the respondent and that no further regulatory action is warranted in the circumstances.

**Table 4: CIIs**

YEAR	NUMBER OF CIIS
2014–15	4
2015–16	17
2016–17	29

Despite the 70% increase in CII case numbers from the 2015–2016 financial year, the OAIC met its target (finalising 84% of CIIs within eight months) reflecting the OAIC’s commitment to working with respondents to resolve issues of non-compliance and improve privacy practices.

### Case study: Disclosure of membership list

The OAIC investigated allegations concerning the disclosure of the Maritime Union of Australia's (MUA) membership list to the Glen Lazarus Team. The investigation found that a MUA employee accidentally left an extract of a membership list, limited to one or two hard copy pages of information, behind at the Glen Lazarus Team political party premises. In response to the incident, MUA committed to a number of actions to ensure the protection of its membership list in the future, and its overall management of personal information. Given the amount of personal information disclosed, the steps MUA took at a state and national level to prevent a similar incident from recurring, the Commissioner considered that the matter was adequately dealt with by the MUA.

The Privacy Act also provides the Commissioner with the power to accept an 'enforceable undertaking' offered by a respondent to resolve the matter. One enforceable undertaking was offered in 2015–2016 following a CII.

### Case study: Online dating data breach

Ashley Madison, an online dating website headquartered in Canada, suffered one of the world's most reported data breaches in 2015 when information about millions of its customers was posted online. Following a joint investigation with the Office of the Privacy Commissioner of Canada, the company behind Ashley Madison, Avid Life Media, agreed to an enforceable undertaking to cease its practice of retaining indefinitely personal information of users, establish a retention schedule, improve privacy policies and procedures in consultation with the OAIC, and roll out an enhanced privacy training program for their employees.

## Assessments

This year we assessed a range of sectors including loyalty programs, identity verification, telecommunications, education and government. We also conducted assessments in the digital health sector. For more information on our digital health assessments, see page 79.

Each of these assessments required a comprehensive and in-depth review of policy documents, interviews with staff and site inspection. The complexity of this year's assessment program was higher than previous years. Consequently, the median time for the completion of assessments was in excess of the six month target.

However, we did meet the target of 100% of the OAIC's recommendations being accepted or planned for action by assessment targets.

## Loyalty programs

Following the completion of two assessments which looked into the loyalty programs of Australia's two largest supermarket retailers, Coles and Woolworths, this year we commenced two new assessments of loyalty programs in Australia. These assessments examine how personal information is managed in accordance with APP 1. The assessments also look at whether sufficient notification to individuals is provided regarding the collection of their personal information in accordance with APP 5. Fieldwork for both assessments has been completed and the assessments will be finalised, and made public, during the 2017–18 financial year.

## Identity verification

Following the completion of two assessments of Document Verification Service (DVS) business users, Nimble and DirectMoney, this year we commenced two new assessments of Gateway Service Providers (GSPs) to the DVS. The assessments examine how personal information collected through the DVS arrangement is handled by GSPs in accordance with APP 3, APP 5, and APP 11. Both assessments will be finalised during the 2017–18 financial year.

## Telecommunications

### **Records of disclosure under the *Telecommunications Act 1997***

Last year, we undertook inspections of the top four telecommunications organisations across Australia (Telstra, Optus, Vodafone and iiNet) to assess their compliance with their record keeping obligations under the *Telecommunications Act 1997* (Telecommunications Act). We issued Vodafone, Optus and iiNet with a number of recommendations, which were accepted by each organisation.

This year we followed up the implementation of our recommendations. Vodafone and Optus informed us that they had implemented our recommendations. Due to concerns identified last year in relation to iiNet's maintenance of these records, we conducted a follow-up inspection of iiNet's record-keeping activities in November 2016. Our inspection found that iiNet has now taken steps to ensure that it is meeting its record keeping obligations for records of disclosures under the Telecommunications Act. This inspection was finalised in February 2017.

### **Handling of personal information disclosed under the *Telecommunications (Interception and Access) Act 1979***

After completing the above assessment on records of disclosure, we commenced a second assessment on Telstra, Vodafone, Optus and iiNet. This assessment examined whether the organisations take reasonable steps to protect the personal information held by them when responding to requests for access by law enforcement agencies, as required under the Telecommunications (Interception and Access) Act 1979 (TIA Act) and in accordance with APP 11. We have finalised our assessment of Telstra, Vodafone and Optus. Our assessment of iiNet will be completed in 2017–18.

## Government

### Passenger Name Record

Under our memorandum of understanding with the Department of Immigration and Border Protection (DIBP) we commenced a Passenger Name Record (PNR) data related assessment which followed up the implementation of recommendations made in a previous assessment undertaken in 2015. The 2015 assessment looked at the new administrative arrangements for the handling of PNR data by DIBP and considered how well the requirements of APP 6 and APP 11 were met by DIBP. The 2015 assessment made four recommendations associated with the arrangements for the use, disclosure and security of PNR data. DIBP accepted these recommendations. This year's assessment also includes consideration of DIBP's practices concerning the destruction and de-identification of PNR data. We have completed the fieldwork for this year's assessment and it will be finalised during the 2017–18 financial year.

### Contractual arrangements in relation to regional processing centres

Last year, we commenced an assessment on DIBP's privacy arrangements for Regional Processing Centres, including:

- general governance and privacy frameworks under APP 1
- how DIBP meets its security obligations under APP 11, including through the use of contractual measures as required under s 95B of the Privacy Act.

We have completed the fieldwork for this assessment. The assessment will be finalised during the 2017–18 financial year.

### *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*

We completed assessments on Schedule 5 and Schedule 6 of the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Foreign Fighters Act) during the 2016–17 financial year. These assessments considered how personal information is handled through border clearance processes at Australian international airports, including biometric information collected by SmartGates (Schedule 5) and the Advanced Passenger Processing (AdPP) data exchanged between airlines and DIBP (Schedule 6).

We made six recommendations to DIBP as part of the assessment on Schedule 5, and four recommendations as part of the assessment on Schedule 6. DIBP accepted all of these recommendations.

We commenced three further assessments that considered how personal information was being handled by DIBP under the Foreign Fighters Act which will be finalised during the 2017–18 financial year.

- An assessment of the security arrangements that are in place to protect personal information after its collection by SmartGates (Schedule 5).
- An assessment of the steps that a third party provider to DIBP is taking to secure personal information collected through AdPP (schedule 6). This assessment will be finalised during the 2017–18 financial year.

- An assessment of the procedures DIBP has in place to respond to an individual's request for access to their personal information that was collected by SmartGates, in accordance with APP 12 (Schedule 5).

## Comcare

Last year, we undertook an assessment on Comcare to see how it collects and handles personal and sensitive information from claimants and providers through workers' compensation claims under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

We focused on Comcare's collection of personal information (APP 3), the notifications provided to individuals around the time of collection (APP 5) and the general governance and privacy framework put in place by Comcare (APP 1). The final report was issued in September 2016. We made two recommendations and Comcare is taking steps to implement these recommendations.

## Tax file numbers

Under the *Privacy (Tax File Number) Rule 2015* which regulates the collection, storage, use, disclosure, security and disposal of individuals' Tax File Number (TFN) information, six specified Australian Government agencies (Commissioner of Taxation/Australian Taxation Office, Australian Prudential Regulation Authority, Department of Human Services, Department of Education and Training, Department of Veterans' Affairs and the Department of Social Services) have obligations to make a range of information publicly available in relation to how TFN information is to be handled. This year we commenced an assessment which looked at how well the agencies meet their obligations. The assessment was conducted through a desktop review of each agency's website and a targeted survey questionnaire sent to each agency. The assessment will be finalised during the 2017–18 financial year.

## Universal Student Identifier

Under our memorandum of understanding with the Department of Education and Training, acting through the Student Identifiers Registrar (the Registrar), we undertook an assessment of the Registrar's maintenance and handling of student identifiers and associated personal information in accordance with the *Student Identifiers Act 2014* and the Privacy Act. The assessment looked at how the Registrar is managing personal information in accordance with APP 1 and APP 5. We made four recommendations which were all agreed to by the Registrar.

## ACT Government

### Access Canberra

Under our memorandum of understanding with the ACT Government, we commenced an assessment to examine Access Canberra's handling of personal information against the requirements of Territory Privacy Principles (TPP) 1 and 5. We have completed the fieldwork for this assessment and it will be finalised during the 2017–18 financial year.

## Data-matching

We perform a number of functions to ensure that government agencies understand their privacy requirements and adopt best privacy practice when undertaking data-matching activities.

Data-matching is the process of bringing together data sets that come from different sources and comparing those data sets with the intention of producing a match. A number of government agencies use data-matching to detect non-compliance, identify instances of fraud and to recover debts owed to the Australian Government. For example, the Australian Taxation Office (ATO) may match tax return data with data provided by banks to identify individuals or businesses that may be under-reporting income or turnover.

Government agencies that carry out data-matching activities must comply with the Privacy Act. Data-matching raises privacy risks because it involves analysing personal information about large numbers of people, the majority of whom are not under suspicion.

### Statutory data-matching

The Commissioner has statutory responsibilities under the *Data-matching Program (Assistance and Tax) Act 1990* (Data-matching Act). The Data-matching Act authorises the use of tax file numbers in data-matching activities undertaken by the Department of Human Services (DHS), the Department of Veterans' Affairs and the ATO. In previous years, we have conducted inspections of DHS' data-matching records to ensure compliance with the requirements of the Data-matching Act. Agencies have relied less on matching using the tax file number, consequently this year we focused on providing advice and planning oversight of the data-matching activities outside of the Data-matching Act.

### Enhanced Welfare Payment Integrity

The Enhanced Welfare Payment Integrity — non-employment income data-matching measure was announced in the 2015–16 Mid-Year Economic and Fiscal Outlook (MYEFO). It increases DHS' capability to conduct data-matching to identify non-compliance by welfare recipients. We received additional funding under this measure to provide regulatory oversight of these new data-matching activities.

We have been working with DHS to design and implement an effective oversight regime to provide assurance to the public and the Australian Government that privacy risks are being addressed. We gave advice on a range of privacy matters, including providing feedback on privacy impact assessments and assisting DHS in ensuring they have an appropriate privacy management framework in place to support the new initiative.

## Data-matching under the voluntary guidelines

We administer the *Guidelines on Data-matching in Australian Government Administration (Guidelines)*, which are voluntary guidelines to assist government agencies with adopting appropriate privacy practices when undertaking data-matching activities that are not covered by the Data-matching Act. This year we reviewed ten data-matching program protocols submitted by matching agencies including the ATO, DHS and the Australian Transaction Reports and Analysis Centre (AUSTRAC).

The Commissioner approved four requests for exemption from certain requirements of the Guidelines. A list of the exemptions that we approved can be found on [www.oaic.gov.au](http://www.oaic.gov.au).

## Advice for businesses and agencies

Our teams provide advice for businesses and government agencies on their obligations under the Privacy Act. We also assist businesses and agencies achieve best practice in their approach to privacy management.

This year we issued advice on a variety of issues including:

- adoption, use and disclosure of government related identifiers
- Australian Public Service (APS) Privacy Governance Code
- credit reporting
- data breach notification requirements
- de-identification and re-identification
- digital identity systems
- direct marketing
- External Dispute Resolution schemes
- family safety initiatives
- Government data matching
- higher education proposals affecting handling of information about students
- law enforcement and national security (Anti-Money Laundering and Counter-Terrorism Financing Act 2006 regulation)
- new and emerging technologies
- online communications and privacy
- privacy and big data
- privacy and international agreements
- telecommunications (including telecommunications sector security reforms).



We also drafted submissions on issues such as:

- the National Digital Health Strategy
- Data Availability and Use
- Elder Abuse
- genomics
- inquiry into the 2016 Census
- the National Cancer Screening Register
- criminal justice
- consent and privacy
- telecommunications, including
  - access to retained telecommunications data in civil proceedings
  - access to customer information in the Integrated Public Number Database (IPND)
  - identity checks for prepaid mobile phones
- drones and privacy
- automated vehicles
- the Anti-Money Laundering and Counter-Terrorism Financing regulatory framework review
- the Telecommunications Sector Security Review.

### Case study: The National Cancer Screening Register

In the lead up to the implementation of the National Cancer Screening Register, the OAIC was involved in a number of aspects of this initiative. The OAIC engaged with the Department of Health on the Privacy Impact Assessment undertaken during the early stages of policy development and reviewed draft legislation relating to the Register.

The OAIC also made a submission to, and appeared before, the Senate Community Affairs Legislation Committee Inquiry. Recommendations made by the OAIC were adopted and implemented. In particular, given the nature of the Register and the sensitive health information it would contain, this included added privacy protections through data breach requirements.

### Case study: The Australian Law Reform Commission's inquiry into elder abuse

In early 2016, the Australian Government announced an Inquiry for the Australian Law Reform Commission (ALRC) on 'Protecting the Rights of Older Australians from Abuse.' The OAIC engaged in this Inquiry by making two submissions to the ALRC over the course of the year. Our submissions recommended ways in which proposed initiatives to address elder abuse could best balance the privacy rights of older Australians with the important objective of safeguarding older Australians from certain forms of abuse.

The ALRC's final report, published in June 2017, referred to and endorsed a number of the OAIC's recommendations and comments, highlighting the OAIC's role in shaping Australian privacy rights across a wide range of significant policy issues. We also liaised with the Age Discrimination Commissioner on this issue.

Submissions can be read in full on the OAIC website.

## Resources

We published a number of new resources, guides and fact sheets in 2016–17.

In preparation for the implementation of the European Union's General Data Protection Regulation (GDPR) and Notifiable Data Breaches (NDB) scheme we published guidance to assist Australian businesses to understand the new requirements.

We provided a self-assessment checklist to assist service providers in considering their privacy obligations under the Data Retention Scheme.

We published *Privacy business resource 19: Direct Marketing* outlining how the requirements in the *Do Not Call Register Act 2006* (DNCR Act) and the *Spam Act 2003* (Spam Act) apply when an organisation direct markets to an individual.

Promoting a key message that understanding good privacy practices is vital to a successful business, we created videos and guidance for start-up businesses.

For individuals we published two fact sheets on health information: *Privacy fact sheet 49: Health information and your privacy* and *Privacy fact sheet 50: Accessing and correcting your health information*.

We also commenced work on developing a series of multimedia resources for healthcare providers to help them understand their privacy obligations and the mandatory data breach notification requirements under the My Health Records Act.

### eLearning course on conducting a privacy impact assessment (PIA)

This year, the OAIC launched a new eLearning course on conducting a privacy impact assessment (PIA). Based on the OAIC's *Guide to undertaking privacy impact assessments*, the course is interactive taking the user through a variety of activities to help them understand the privacy impact assessment process.

Launched during Privacy Awareness Week 2017, there were 67 course completions by the end of the first week. There has been extremely positive feedback with a rating of 9.4 out of 10 by users and 100 per cent commenting that they would recommend it. As of 30 June 2017, the course had been completed 167 times.



*Very simple process - I had thought that a PIA was this overly complicated process but this course broke it down very simply. ...Thanks - this was immensely useful.*

PIA eLearning user

## Digital health

Many Australians view their health information as being particularly sensitive. This sensitivity has been recognised in the *My Health Records Act 2012* (My Health Records Act) and HI Act, which regulate the collection, use and disclosure of information, and give the Australian Information Commissioner a range of enforcement powers. This sensitivity is also recognised in the Privacy Act which treats health information as 'sensitive information'.

### Assessments

We conducted three assessments during the reporting period, two of which commenced in the previous financial year.

An assessment was made of the My Health Record System Operator's implementation of recommendations made by the OAIC in its previous audit of the System Operator against Information Privacy Principle 4. The previous audit examined how the System Operator protected personal information held on the National Repositories Service. We made three recommendations, all of which were agreed to by the System Operator.

We conducted an assessment into the handling of personal information by the Australian Health Practitioner Regulation Agency (AHPRA) in its role as the national registration authority for healthcare practitioners. The assessment focused on AHPRA's handling of healthcare identifiers and associated identifying information under APPs 10 (data quality) and 11 (security). We made four recommendations, all of which were agreed to by AHPRA.

We also conducted an assessment of the Department of Human Services as a contractor to the My Health Record System Operator for services related to the My Health Record system. In particular, the assessment focused on DHS's privacy management and governance arrangements under APP 1.2. Fieldwork was conducted in late March 2016 and the assessment will be finalised in the 2017–18 financial year.

## Mandatory data breach notifications

We are responsible for mandatory data breach notifications under s 75 of the My Health Records Act.

This year we received six data breach notifications from the My Health Record System Operator. These notifications related to unauthorised My Health Record access by a third party.

We also received 29 notifications from the Chief Executive of Medicare in their capacity as a registered repository operator under s 38 of the My Health Records Act.

- Nine of these notifications involved separate breaches related to intertwined Medicare records of individuals with similar demographic information. This resulted in Medicare providing data to the incorrect individual's My Health Record.
- Twenty notifications, involving 123 separate breaches, resulted from findings under the Medicare compliance program. In these instances, certain Medicare claims made in the name of a healthcare recipient but not by that healthcare recipient were uploaded to their My Health Record.

For further information, refer to the *Annual Report of the Australian Information Commissioner's activities in relation to digital health 2016–17*.

## Legislative instruments

Under the Privacy Act, the Commissioner has powers to make certain legislative instruments. These legislative instruments must comply with the requirements of the *Legislation Act 2003*. They are publicly available on the Federal Register of Legislative Instruments.

No legislative instruments were made during this reporting period.

The Commissioner has specific obligations under section 17 and paragraph 28A(1)(d) of the Privacy Act, to issue rules concerning the collection, storage, use, and security of tax file number information, and to monitor compliance with these rules. In July 2016 we commenced targeted assessments of selected agencies' compliance with the *Privacy (Tax File Number) Rule 2015* (TFN Rule). We anticipate finalising our TFN Rule assessments in the 2017–18 financial year.

We also administer the *Privacy (Credit Reporting) Code 2014* (CR Code), which regulates the handling of consumer credit reporting information in Australia. In April 2017, the Commissioner initiated an independent review of the operation of the CR Code, as required by paragraph 24.3 of the CR Code. We then commenced a tender process to engage a consultant to undertake the review. The review will be conducted and finalised in the 2017–18 financial year.

At the end 2016–17, the Commissioner announced the development of a new Australian Public Service (APS) Privacy Code. For more information on the APS Code, please see page 96.

## Awareness

This year we continued to raise awareness about privacy rights for individuals, and also helped Australian businesses and government agencies understand their privacy obligations.

*Privacy...is about transparency, security, and choice. It's about organisations being up-front about their personal information handling practices so that individuals can make informed choices about how they share their information. And it's about respecting customer trust by maintaining strong security and information handling practices throughout the life cycle of personal data.*

Timothy Pilgrim PSM, Australian Information and Privacy Commissioner, in *Welcome to Privacy Awareness Week*. A message from the Commissioner 15 May 2017

## Reaching our audiences

This year we focused significant effort on assisting Australian businesses to understand the new requirements for the European Union's General Data Protection Regulation (GDPR) and Notifiable Data Breaches (NDB) scheme both of which come into effect in 2018.

We also promoted the importance of good privacy practice to start-up businesses.

Reaching the community was also a focus for the OAIC this year — through targeted events and social media activity.

## Privacy Awareness Week

Privacy Awareness Week (PAW) is the OAIC's flagship event, the core purpose of which is to promote and raise awareness of privacy issues and the importance of protecting personal information.

This year's event was the most successful ever:

- 49 per cent increase in PAW partners, 369 compared to 246 in 2016
- Over 250 mainstream media mentions (compared to 68 in 2016)
- Over 2,000 social mentions with 21.0K impressions of the OAIC's tweets during the week
- 457 people signed up to use the Privacy Impact Assessment (PIA) eLearning resource which was released during PAW
- 132 privacy professionals registered to attend the ACAPS industry debrief event
- More than 50 people registered to attend the 'Growing up digital' event which featured the eSafety Commissioner.

## Speaking engagements

This year we participated in 22 speaking engagements aimed at privacy professionals.

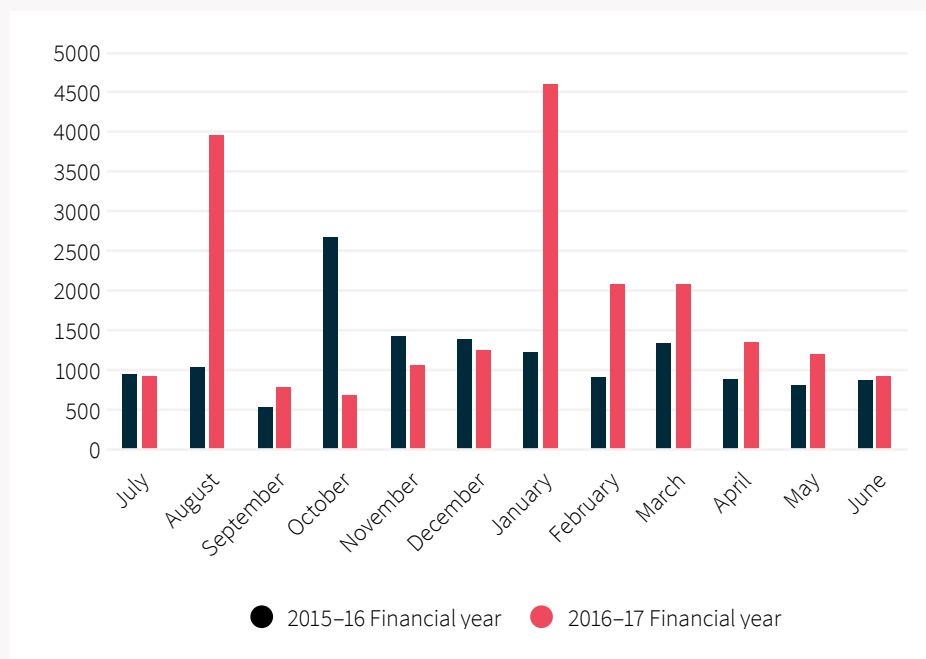
## Media

One of our aims this year was to increase media coverage about the public's awareness of privacy.

We achieved this as demonstrated by the below:

- 40% more media enquiries than 2015–16
- Over 250 mainstream media mentions during PAW (compared to 68 in 2016)
- Over 20 broadcast media interviews with the Commissioner during PAW.

The below graph shows the increase in reporting of privacy, and the spike when issues of community concern are covered.

**Graph 1: General privacy — media exposure**

## Digital

The top six pages viewed on the OAIC website reflected the growing awareness of privacy amongst the community, Australian government agencies and businesses.

- Privacy Impact Assessment (PIA) eLearning Program
- Definition of 'personal information'
- Notifiable Data Breach scheme
- Direct marketing - APP 7 for businesses
- Start-ups and privacy
- Data retention self-assessment checklist.

## FOI

Provides a legally enforceable right of access to government documents.

It applies to Australian Government ministers and most agencies, although the obligations of agencies and ministers are different.

Individuals have rights under the FOI Act to request access to government documents. The FOI Act also requires government agencies to publish specified categories of information, it also allows them to proactively release other information.



## Enquiries

We respond to enquiries from the public on FOI issues and our Information Commissioner review function. This year we saw a slight decrease in these enquiries from 2015–16, with the total for 2016–17 being 2,062. We answered 1,454 phone calls, 599 emails and nine in-person enquiries.

Approximately 48% of all enquiries about FOI matters related to general processes for FOI applicants, including how to make an FOI request or complaint, or seek review of an FOI decision.

The OAIC experienced a significant increase in IC reviews — a 24% increase over 2015–16.

**Table 5: Top FOI enquiry by issues\***

ISSUE	NUMBER*
General processes	989
Jurisdiction	865
Processing by agency	135
Agency statistics	133
Access to general information	20
Access to personal information	17
Amendment and annotation	6
Vexatious application	5
Information Publication Scheme	3

\*There may be more than one issue in each enquiry

## Information Commissioner reviews

In an Information Commissioner review (IC review), the Information Commissioner is able to review decisions made by Australian government agencies and ministers, including decisions:

- refusing to grant access to documents wholly or in part
- that requested documents do not exist or cannot be found
- granting access to documents, where a third party has a right to object (for example, if a document contains their personal information)
- to impose charges for access to documents, including decisions refusing to waive or reduce charges
- refusing to amend or annotate records of personal information.

This year we experienced a significant increase in IC reviews, receiving 632 applications for review — a 24% increase over 2015–16 (when the number of applications received was 37% higher than the previous year).

Despite the significant increase in the number of applications, the OAIC was able to finalise 515 IC reviews (a 13% increase compared to 2015–16 when 454 reviews were finalised). Of the 515 IC reviews finalised in 2016–17, 86% were finalised within 12 months, exceeding the intended outcome of 80% completed within 12 months.

The OAIC encourages resolution of IC reviews by agreement between the parties where possible. In 2016–17, 411 IC reviews were finalised without a formal decision being made (80% of all IC reviews finalised).

In 2016–17, 13 IC review were finalised by agreement under s 55F (by way of written agreement between the parties to the IC review), a 40% increase over 2015–16. Two hundred and twenty-four IC reviews were finalised after the applicant withdrew their request for IC review following action taken by the agency to resolve the applicant's concerns (such as by releasing information informally) or following an appraisal by the OAIC of the merits of their case.

The Information Commissioner made 104 formal decisions under s 55K of the FOI Act during 2016–17 (20% of all IC reviews finalised). Although 63% of these decisions (65 decisions) affirmed the decision under review, 26% of those (17 decisions) had been revised under s 55G of the FOI Act during the IC review, giving greater access to the documents sought. The Information Commissioner set aside 22% (23 decisions) and varied 15% (16 decisions) of the reviewable decisions.

The decisions published by the Information Commissioner are an important feature of the OAIC's work. They help agencies interpret the FOI Act and provide guidance on the exercise of their powers and functions. The OAIC adopts a practical approach to its decision making and to its role in helping agencies meet their obligations under the FOI Act.

All decisions are published on the AustLII website as part of the Australian Information Commissioner (AICmr) series.

Some Information Commissioner decisions made during 2016–17 are highlighted below.

## ‘LI’ and Department of Education and Training (Freedom of information) [2017] AICmr 41 (10 May 2017)

The applicant sought access to documents relating to the Building Education Revolution program relating to a primary school in Yarraville. The Department granted partial access to the documents sought. However in his review application, the applicant contended the Department held, or should hold, further documents.

The Information Commissioner affirmed the Department’s decision, finding that the Department had taken all reasonable steps to find the requested documents. The Information Commissioner also found that documents stored by a third party, the Block Grant Authority (the BGA), were not ‘documents of an agency’ under s 4(1) of the FOI Act or documents in the Department’s constructive possession.

With regard to the nature and timing of the relationship between the Department and the BGA, the Information Commissioner found that the Department was not obliged to take contractual measures to enable access to documents stored by the BGA in accordance with s 6C of the FOI Act. The evidence indicated there was a funding agreement between the Department and the BGA which commenced in 2009. Section 6C only applies to *contracts* entered into *on or after* 1 November 2010.

## Tristan Masterson and the Murray-Darling Basin Authority (Freedom of information) [2017] AICmr 57 (22 June 2017)

The applicant sought access to documents containing information about aircraft wreckage in and around Lake Victoria (NSW), including the location of aircraft wreckage.

The Information Commissioner considered whether disclosing an extract from a database containing information about Aboriginal cultural heritage items and locations would or could be reasonably expected to have a substantial adverse impact on the proper and efficient conduct of the Murray-Darling Basin Authority’s (the MDBA) operations in Lake Victoria for the purposes of s 47E(d) of the FOI Act and, if so, whether giving Mr Masterson access to the documents, would, on balance, be contrary to the public interest.

The Information Commissioner considered whether the predicted effect of disclosure could reasonably be expected to occur with regard to the particulars of the predicted effect detailed by the MBDA in its reasons for decision and submissions.

The Information Commissioner was satisfied that disclosure of the database extract would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the MDBA’s operations and that the public interest factors against disclosure outweighed the factors in favour of disclosure.

## Sea Shepherd Australia and Department of Immigration and Border Protection (Freedom of information) [2017] AICmr 48 (23 May 2017)

The Information Commissioner set aside a decision of the Department of Immigration and Border Protection which found that audio-visual footage of whaling activities taken from an Australian government vessel was exempt from disclosure on the basis that disclosure would, or could reasonably be expected to, damage the Commonwealth's international relations (s 33(a)(iii) of the FOI Act).

Noting the Australian government's publicly available submission to the International Court of Justice in the *Whaling in the Antarctic* proceedings, the Commissioner was satisfied that information was available in the public domain about the subject matter of the documents and the issue of whaling generally. In addition, the Commissioner considered the passage of time since the records came into existence in early 2008 to be significant.

## Complaints

Under s 69 of the FOI Act the Information Commissioner has power to investigate agency actions relating to the handling of FOI matters.

Following the Australian Government's decision to disband the OAIC as announced in the 2014–15 budget, the FOI complaints handling function was transferred to the Commonwealth Ombudsman between 1 November 2014 and 30 June 2016. The OAIC resumed investigating FOI complaints from 1 July 2016 following the Government's announcement that all functions would remain with the OAIC.

In 2016–17, the OAIC received 36 FOI complaints and closed 18. Delay is one of the most complained about aspects of agency handling of FOI matters. When an agency exceeds the statutory timeframe to process an FOI request, they are 'deemed' to have refused the request for access. This gives rise to a right to seek IC review of the access refusal decision.

The OAIC is of the view that making an FOI complaint is not the appropriate mechanism when IC review is available, unless there is a special reason for undertaking an investigation and the matter can be dealt with more appropriately and effectively as a complaint. As a result, after consulting the applicant, the OAIC generally treats complaints about agency delay as an application for IC review of a deemed refusal because it allows the Information Commissioner to review the decision the agency ultimately makes without the applicant needing to make a new IC review application. This approach accounts for the relatively small number of FOI complaints in 2016–17.

# Extensions of time

The FOI Act sets out timeframes within which agencies and ministers must process FOI requests.

If a decision on a request is not made within the statutory timeframe, the agency or minister is deemed to have made a decision refusing the request and the FOI applicant can apply for IC review of that deemed decision.

The Information Commissioner can grant an extension of time to enable government agencies or ministers to process a complex or voluminous FOI request, or when there was a deemed decision to refuse a request for documents or to amend or annotate a personal record. An extension granted after a deemed decision can provide a supervised timeframe for an agency or minister to finalise the request.

**Table 6: Overview of FOI extensions of time notifications and requests received**

YEAR	2013–14	2014–15	2015–16	2016–17
Received	2,437	4,393	5,605	4,412
Closed	2,456	4,384	5,602	4,420

We endeavour to respond to extension of time applications from agencies and ministers within five working days. This year we finalised 94% of extension of time applications within five working days.

**Table 7: Notifications and extension of time requests finalised**

REQUEST TYPE	2013–14	2014–15	2015–16	2016–17
s 15AA	1,898	3,900	5,171	3,808
s 15AB	362	249	283	453
s 15AC	132	177	102	112
s 54B	1	0	0	0
s 54D	31	33	30	29
s 54T	32	25	16	18
<b>Total</b>	<b>2,457</b>	<b>4,384</b>	<b>5,602</b>	<b>4,420</b>

s 15AA — notification of agreement between agency and applicant to extend time

s 15AB — extension of time for complex or voluminous request

s 15AC — extension of time where deemed refusal of FOI request

s 54B — extension of time for internal review request

s 54D — extension of time where deemed affirmation of original decision on internal review

s 54T — extension of time for person to apply for IC review.

The extension of time provisions are an important feature of the FOI Act. They encourage less formal and more interactive engagement between agencies and applicants about the scope of FOI requests and the expected processing times. The notification process required under s 15AA ensures agencies have generally given realistic consideration to the reasons for delay before seeking an extension of time.

In deciding whether to grant an extension of time, the OAIC considers the impact this might have on an applicant. However, while this is a relevant consideration, it is not determinative.

## Vexatious applicant declarations

The Information Commissioner has the power to declare a person to be a vexatious applicant if he is satisfied that the grounds set out in s 89L of the FOI Act exist. Making a vexatious applicant declaration is not something the Information Commissioner undertakes lightly, but its use may be appropriate at times. A declaration by the Information Commissioner can be reviewed by the AAT.

During 2016–17, the Information Commissioner received seven applications from agencies under s 89K seeking to have a person declared a vexatious applicant. Seven applications were finalised in 2016–17, with two declarations being made, four refused and one found to be invalid. These declarations are also published on the AustLII website as part of the Australian Information Commissioner (AICmr) series.

## Department of Employment and 'JI' [2016] AICmr 56 (31 August 2016)

Over nearly two years, the respondent engaged in 67 separate FOI access actions with the Department of Employment.

The respondent's justifications for repeatedly engaging in access actions were her assertions that fraudulent records had been created and held by various organisations and Government agencies and she felt 'an enormous inaccuracy in the record system.' As further justification, the respondent explained she has been trying to 'correct' the records for almost 25 years and that the process is not yet complete for her.

In determining the respondent to be a vexatious applicant, the Commissioner considered the number, frequency and nature of her access actions, and the fact that she has not made reasonable attempts to moderate her behaviour, or limit the administrative impact that her access actions are having on the Department.

In balancing the respondent's rights under the FOI Act, against the principle that those rights should not be abused, the Commissioner imposed a declaration on the respondent restricting her ability to make requests under the FOI Act to the Department for a period of 12 months.

The respondent then sought review of the Commissioner's declaration in the Administrative Appeals Tribunal (AAT) (see *Morris and Australian Information Commissioner (Freedom of information)* [2017] AATA 363 (22 March 2017)).

In affirming the Commissioner's declaration, the AAT found that some of the applicant's access actions were an abuse of process in and of themselves, because a number revisited matters that had previously been decided without offering further evidence or a reasonable explanation why the request should be reconsidered.

The AAT considered the terms of the Commissioner's declaration 'entirely appropriate and well founded' given the various factors in the case; including that the Commissioner's declaration balanced rights under the FOI Act, with the proper and efficient functioning of the Departments use of its resources.

## Awareness

### Guidelines

In December 2016, the Information Commissioner issued revised guidelines under s 93A of the FOI Act, which Australian Government ministers and agencies must have regard to when performing a function or exercising a power under the FOI Act. The revised parts include:

- Part 1 — Introduction to the Freedom of Information Act 1982
- Part 2 — Scope of application of the Freedom of Information Act
- Part 4 — Charges for providing access
- Part 5 — Exemptions
- Part 6 — Conditional exemptions
- Part 10 — Review by the Information Commissioner
- Part 11 — Complaints and investigations
- Part 12 — Vexatious applicant declarations

### Events

The OAIC participated in various activities throughout the year to raise awareness about accessing government information and the role of the OAIC and its processes. We delivered presentations to stakeholders on the OAIC's IC review and FOI complaints process and participated in the Australian Government Solicitor's FOI Practitioners' Forums.

### Media

The Information Commissioner issued a joint media release with the Australian Information Access Commissioners regarding International Right to Know Day on 28 September 2016 and the 25th anniversary of freedom of information 2 December 2016.

*Access to information and participation in government processes contributes to the transparency of government – promoting better decision making, accountability, and greater public trust. This is the key contribution freedom of information makes to our modern democratic governments.*

Joint Media Statement — 250th Anniversary of Global Freedom of Information  
— 2 December 2016



## FOI processing statistics received from agencies and Ministers

More statistical tables related to agencies and Ministers FOI processing are available in Appendix D to this report. The full dataset for 2016–17 is published at: <http://data.gov.au/dataset/freedom-of-information-statistics>

### Numbers of FOI requests received

The number of FOI requests received by agencies and Ministers increased by just over 4% in 2016–17 compared to 2015–16. This rate of increase was slower than between 2015–16 and the previous year.

**Table 8: Total FOI requests received 2010–11 to 2016–17 and the percentage increase from the previous year**

2010–11	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17
23,605	24,764	24,944	28,463	35,550	37,996	39,519
	4.91%	0.73%	14.11%	24.90%	6.88%	4.01%

### Numbers of FOI requests received by different agencies

In 2016–17, the Department of Immigration and Border Protection (DIBP), the Department of Human Services (DHS) and the Department of Veterans' Affairs continued to receive the majority of FOI requests (73% of requests received by all agencies and Ministers). The vast majority of the requests to these three agencies are from individuals seeking access to documents containing their own personal information (97% of the requests received by these agencies).

In 2016–17, three agencies moved into the top 20 ranking by numbers of FOI requests received, namely; the Northern Australian Infrastructure Facility (NAIF), established on 1 July 2016, the Immigration Assessment Authority (IAA) and the Commonwealth Ombudsman.

The three agencies that were in the top 20 list in 2015–16 that did not make the 2016–17 list were Australia Post, which saw a 56.3% reduction in requests and the Trade Marks Office and Comcare, despite those two agencies receiving increases in requests of 11% and 8% respectively.

Of the agencies that continued to be in the top 20 in 2016–17, the Department of Health (DOH) and the Australian Transaction Reports and Analysis Centre (AUSTRAC) experienced an increase in the total number of requests received since the previous year, by 24% and 19% respectively. The Australian Securities and Investments Commission (ASIC) and the Department of the Prime Minister and Cabinet (DPMC) saw a reduction in the total number of requests received, by 20% and 14% respectively.

## Requests for personal information and for other information

A request for personal information means a request for documents that contain information about a person who can be identified (usually the applicant, though not necessarily). A request for ‘other’ information means a request for all other documents, such as documents concerning policy development and government decision making.

In 2016–17, 32,383 requests (82% of all requests) were for documents containing personal information. This represents a slight decrease in comparison to the proportion of requests for personal information last year, which accounted for 87% of all requests received by agencies.

## FOI requests finalised

Despite seeing an increase in the total number of requests received in 2016–17, the number of matters finalised by agencies and Ministers increased by 4.1%.

**Table 9: Overview of FOI requests received and dealt with between 2014–15 and 2016–17**

FOI REQUESTS PROCESSING BY ALL AGENCIES	2014–15	2015–16	2016–17	% +/-
On hand at the beginning of the year	2,397	4,505	5,395	+ 19.8
Received during the year	35,550	37,996	39,519	+ 4.0
Total requiring determination [1]	37,947	42,501	44,914	+ 5.7
Withdrawn	3,641	3,203	3,844	+ 20
Transferred	729	731	763	+ 4.4
Determined [2]	29,000	33,173	34,029	+ 2.6
Finalised [3]	33,370	37,107	38,636	+ 4.1
On hand at the end of the year	4,577	5,394	6,278	+ 16.4

[1] Addition of on hand at the beginning of the year and received during the year.

[2] Covers access granted in full, part or refused.

[3] The sum of withdrawn, transferred and determined.

**Table 10: FOI requests determined**

DECISION	2015–16			2016–17		
	PERSONAL	OTHER	TOTAL	PERSONAL	OTHER	TOTAL
Granted in full	17,764	790	18,554	18,040	837	18,877
Granted in part	9,848	1,458	11,306	10,180	1,587	11,767
Refused	1,835	1,478	3,313	1,899	1,486	3,385
<b>Total</b>	<b>29,447</b>	<b>3,726</b>	<b>33,173</b>	<b>30,119</b>	<b>3,910</b>	<b>34,029</b>

## Use of exemptions in FOI decisions

The personal privacy exemption (s 47F) of the FOI Act remains the most commonly used exemption in FOI decisions (47.9% of all exemptions claimed).

Reliance on the ‘certain operations of agencies’ exemption (s 47E) of the FOI Act increased significantly from 2014–15 to 2015–16, from 13.9% to 19.8% but has declined slightly in 2016–17, to 18.5%.

Reliance on the documents affecting enforcement of law and protection of public safety exemption (s 37) of the FOI Act continued to decrease, from 12.2% in 2014–15 to 8.8% in 2015–16, and to 6.6% in 2016–17.

## Agency costs in processing FOI requests

The total reported cost attributable to processing FOI requests in 2016–17 was \$44.787 million, an increase of 8.8% on the previous year’s total of \$41.152 million. This increase outstrips the increase of 2.6% in requests determined in 2016–17, however the average cost per request determined, which rose by 6% to \$1,316, is the second lowest since 2008–09.

## Develop the personal information management capabilities of Australian businesses and government agencies

Our third challenge for 2016–17 was to continue to develop the personal information management capabilities of Australian businesses and government agencies.

This year our activities focused on promoting the relationship between strong privacy governance and improved business effectiveness; and taking steps to build the privacy management capability of the Australian Public Service.

### Australian Public Service (APS) Privacy Governance Code

This year, the OAIC initiated the development of an Australian Public Service (APS) Privacy Governance Code, which was announced jointly in May 2017 with the Secretary of the Department of Prime Minister and Cabinet.

The Privacy Code will apply to all Australian Government agencies and will support the Australian Government's data innovation agenda by strengthening the existing privacy capability of agencies and enhancing privacy governance across the APS.

Australian Government agencies are now operating in a complex personal information management environment. Data is acquired compulsorily from individuals in many cases, and there is a growing emphasis on maximising the utility of government data and ensuring that it can be shared efficiently and consistently with the community's expectations.

It is in this context that the Privacy Code is being developed to help build public trust and confidence in the Australian Government's information-handling practices and proposed new uses of data.

The Privacy Code will require all agencies to:

- have a privacy management plan
- appoint a designated privacy officer
- appoint a senior official as a 'Privacy Champion' to provide cultural leadership and promote the value of personal information
- undertake a written Privacy Impact Assessment for all 'high risk' projects or initiatives that involve personal information
- take steps to enhance internal privacy capability, including by undertaking any necessary training and conducting regular internal audits of personal information-handling practices.

The requirements of the Privacy Code will be flexible and scalable, and take account of the agency's size, and the sensitivity and amount of personal information it handles.

The OAIC has been collaborating with agencies, and developing a range of resources and training tools to support agencies when the Privacy Code comes into effect on 1 July 2018. This includes the release of the Privacy Impact Assessment (PIA) eLearning program during Privacy Awareness Week.

We have also surveyed learning and development professionals in agencies to determine what privacy training is currently undertaken by staff, and what further support and resources are required. The findings will form part of the OAIC's program of work for 2017–18.

## Building capability

Many of the general privacy activities the OAIC undertakes (as outlined in the Privacy section of this report) are focused on developing personal information capabilities of Australian businesses, government agencies and communities – including guidance, advice, resources and assessment, as well as developing the Privacy Code.

Our Privacy Impact Assessment (PIA) eLearning program will support agencies in preparation for the Privacy Code coming into effect on 1 July 2018.

Of note, in preparation for the implementation of the European Union's General Data Protection Regulation (GDPR) and Notifiable Data Breaches (NDB) scheme we published guidance to assist Australian businesses to understand the new requirements.

3



Corporate governance	100
Human resources	102
Procurement	108
Other requirements	110

## Part 3

### Management and accountability

## Corporate governance

Setting strategic direction, implementing effective policies and processes, and monitoring progress are key elements of OAIC's corporate governance framework.

### Enabling legislation

The Office of the Australian Information Commissioner was established in November 2010 as an independent statutory agency under the *Australian Information Commissioner Act 2010* (AIC Act). The OAIC is responsible for privacy functions that are conferred by the *Privacy Act 1988* (Privacy Act) and other laws.

The OAIC has FOI functions, including the oversight of the operation of the *Freedom of Information Act 1982* (FOI Act) and review of decisions made by agencies and ministers under that Act.

The OAIC is accountable as a non-corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The OAIC has annual reporting responsibilities under section 46 of the PGPA Act. It also has a range of reporting and other responsibilities under legislation generally applicable to Commonwealth government authorities.

### Portfolio structure and responsible minister

The OAIC is a statutory authority within the Attorney-General's Department. The minister responsible is Senator the Hon George Brandis QC.

### Executive

The OAIC Executive, comprising the Commissioner, Deputy and Assistant Commissioners, meets weekly and oversees all aspects of the OAIC's business covering business management and performance, finance, human resources, governance, risk management, external engagement and business planning.



## Risk management

Our risk management framework helps staff assess risks, make informed decisions, confidently engage with risk and harness its opportunities.

The OAIC Executive regularly considers and reviews the risks faced by the agency and the reports on risk received from the Audit Committee.

This year, in preparation for the implementation of the Australian Public Service (APS) Privacy Governance Code and the Notifiable Data Breaches scheme, we have highlighted the need to regularly review all activities associated with implementation to ensure that any identified risks are mitigated.

## Audit committee

Our audit committee assists the Commissioner to discharge his responsibilities on the OAIC's finances and performance, risk oversight and management, and system of internal control. The Audit Committee oversees the work of the OAIC's internal auditors, ensures the Annual Work Program and ensures appropriate coverage of our strategic and operational risks.

The Audit Committee is chaired by the Assistant Commissioner Dispute Resolution and has two independent members from the Australian Human Rights Commission (AHRC) and the Inspector-General of Intelligence and Security. Representatives from the Australian National Audit Office (ANAO) attend meetings of the Audit Committee as observers.

## Corporate services

We have a memorandum of understanding (MOU) with the AHRC that covers the provision of corporate services. This includes financial, administrative, information and communications technology and human resources services. We also sublease our premises in Sydney from the AHRC under this arrangement. More information on the OAIC's MOU with the AHRC can be found in Appendix B.

## Human resources

At the OAIC we strive to provide a workplace that offers fulfilling and challenging work, as well as promoting the professional and personal development of our employees. As the national expert in both personal information and FOI regulation, we rely on a team of highly skilled and competent staff.

In 2016–17, the OAIC continued to build capacity within the existing workforce, developing the necessary skillsets to meet the heightened demands for privacy and information management for the Australian public, government agencies and wider industry.

### Our people

As a small agency in a competitive market, the OAIC continues to face challenges in recruiting and retaining skilled people. We use a number of strategies including online and social media advertising to attract talent.

This year we had an average staffing level of 71. During the year turnover was approximately 13.4% per cent for ongoing staff. This involved eleven ongoing staff resigning, retiring or transferring to other Australian Government agencies. We had twelve ongoing staff join the OAIC during the year. As of 30 June 2017, we had 74.37 full-time equivalent (FTE) staff, including ongoing and non-ongoing employees.

Table 11: Staffing profile as at 30 June 2017 (headcount)

CLASSIFICATION	MALE	FEMALE	FULL TIME	PART TIME	TOTAL ONGOING	TOTAL NON-ONGOING	TOTAL
Statutory Office Holders	1	0	1	0	0	1	1
SES Band 1	1	1	1	1	2	0	2
SES Band 2	0	1	1	0	1	0	1
Executive Level 2 (\$116,828-\$133,328)	2	7	4	5	8	1	9
Executive Level 1 (\$100,580-\$107,591)	6	15	17	4	19	2	21
APS 6 (\$79,809-\$87,885)	8	27	29	6	34	1	35
APS 5 (\$72,377-\$76,516)	1	7	3	5	6	2	8
APS 4 (\$64,921-\$68,981)	2	2	4	0	4	0	4
APS 3 (56,454-60,931)	0	1	1	0	0	1	1
Total	21	61	61	21	74	8	82

Employment stats

Our staff

82

Total staff

Employment type

61

Full-time

21

Part-time

Gender

61

Female

21

Male

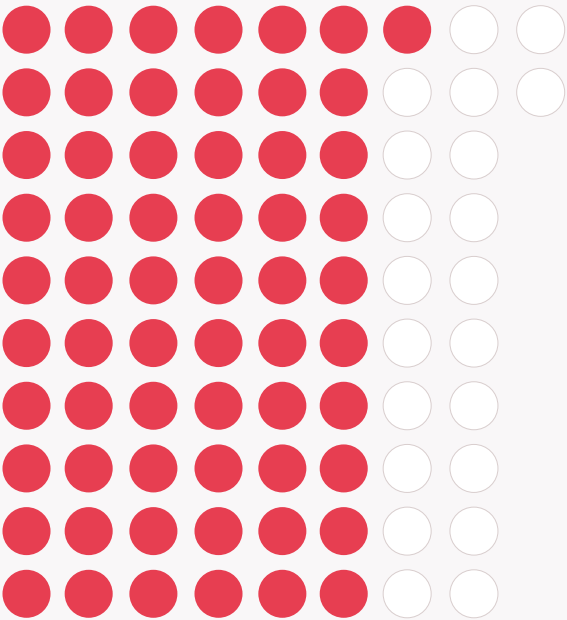
Diversity

22%

Non-English speaking background

1.2%

Indigenous



## Organisational changes

This year there were a number of senior internal promotions. Ms Angelene Falk was promoted to Deputy Commissioner, overseeing the OAIC's corporate and communication functions and organisational strategic direction. Ms Falk was previously the Assistant Commissioner, Regulation and Strategy at the OAIC.

Mr Andrew Solomon was promoted to the position of Assistant Commissioner, Dispute Resolution and Ms Melanie Drayton to the position of Assistant Commissioner, Regulation and Strategy.

A temporary Business Improvement team was also established to review the OAIC's corporate governance frameworks and implement new policy and procedures in risk management, fraud control and business continuity. The team reviewed and improved the OAIC's HR, IT, records management and other associated policies and procedures.

## Learning and development

We are committed to ongoing learning and development of our staff, recognising the importance of building and developing capabilities to meet current and future needs.

Our work is increasingly becoming more technical as the digital environment becomes more complex, and we are also seeing more complex and substantive complaints and investigations compared to previous years.

Staff are able to access a range of learning and development opportunities in line with the Australian Public Service Commission's 70–20–10 model of learning.

The OAIC provides the following components as part of its learning and development program for staff.

### **Talking about performance (TAP)**

The OAIC's Performance Management and Development Scheme 'Talking about performance' provides regular and formal assessment of staff members' work performance and to identify learning and development needs.

### **Professional skills development**

Staff undertake specialised training to ensure they are continuously building on their subject-matter expertise and able to access the latest information from industry and government.

This year relevant staff attended specialist training in conciliation, investigations, mediation, auditing skills, and report writing.

## Mentoring program

The mentoring program aims to create productive professional relationships that allow knowledge, insights and assistance to be shared between more experienced people — mentors — and less experienced people — mentees. Three Executive members act as mentors as part of the program: the Deputy Commissioner, Assistant Commissioner Dispute Resolution, and Assistant Commissioner Regulation and Strategy.

## Study and professional membership assistance

The OAIC encourages staff to undertake study to develop their knowledge and skills in relevant areas. Study assistance provide skilled and knowledgeable staff for current and future OAIC requirements and supports staff in meeting their learning and development needs.

# Benefits

We offer our people the following non-salary related benefits:

- flexible working arrangements including home-based work where appropriate
- employee assistance program
- extended purchase leave
- maternity and adoption leave
- parental leave
- leave for personal compelling reasons and exceptional circumstances
- access to paid leave at half pay
- flextime (APS staff)
- study assistance
- support for professional and personal development
- healthy lifestyle reimbursement
- eyesight testing and reimbursement of prescription glasses
- family care rooms
- influenza vaccinations.

## Workplace relations

The OAIC's Enterprise Agreement 2016–19 was approved by the Fair Work Commission on 5 May 2016.

In 2016–17, no staff received performance pay or were under any individual flexibility arrangements, Australian workplace agreements or common law contracts.

## OAIC Consultation Forum

The OAIC Consultation Forum (held twice a year) provides an opportunity for the OAIC, its employees and their representatives to meet and consider issues relating to working at the OAIC.

## Statutory Office Holder and SES remuneration

The terms and conditions of the OAIC's statutory office holder is determined by the Remuneration Tribunal. Remuneration for the OAIC's Senior Executive Service (SES) officers is governed by determinations made by the Commissioner under s 24(1) of the *Public Service Act 1999*.

## Workplace diversity

We recognise the importance of reflecting the community we serve through diversity in staffing. Currently 22% of staff have a non-English speaking background and 1.2% identify as Indigenous.

In 2016–17 the OAIC established a Diversity Committee which is led by the Assistant Commissioner, Dispute Resolution and includes representatives from the Regulation and Strategy Branch, enquiries line, Dispute Resolution Branch and the Strategic Communications and Coordination and Business Improvement sections. The Committee is responsible for driving the OAIC's wider diversity strategy and coordinating the OAIC's obligations under Multicultural Access and Equity Reporting.

Since 1994, Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's State of the Service Report and the APS Statistical Bulletin. These reports are available at [www.apsc.gov.au](http://www.apsc.gov.au). From 2010–11, government agencies have no longer been required to report on these functions.

## Work health and safety

We share expertise and resources on Work Health and Safety (WHS) issues with the AHRC. Our WHS representatives are members of the joint agencies' WHS Committee. We conduct regular site inspections as a preventative measure and there have been no incidents reported over the last year. All new staff are provided with WHS information upon commencement and ongoing support and assistance is offered to our people.

## Procurement

In 2016–17, we complied with the government's purchasing policies as stated in the Commonwealth Government Procurement Rules. We encourage competition, value for money, transparency and accountability.

All contracts were awarded after ensuring the efficient, effective, economical and ethical use of Australian Government resources.

In 2016–17, no contracts were exempt from reporting on AusTender on the basis that publishing contract details would disclose exempt matters under the FOI Act. All awarded contracts valued at \$100,000 (GST inclusive) or greater contained standard clauses granting the Auditor-General access to contractor's premises.

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.

## Consultants

We engage consultants where we lack specialist expertise or when independent research, review or assessment is required.

Typically, we only engage consultants to:

- investigate or diagnose a defined issue or problem
- carry out defined reviews or evaluations
- provide independent advice, information or creative solutions to assist with our decision making.

During 2016–17, we entered into two consultancy contracts. The total actual expenditure for these contracts were \$28,340.00 (excluding GST). No consultancy contracts from previous periods were continued into this period.

Prior to engaging consultants, we take into account the skills and resources required for the task, the skills available internally and the cost-effectiveness of engaging external expertise. Additionally, all the decisions that we make relating to consultancy contracts are made in accordance with the *Public Governance, Performance and Accountability Act 2013* and related regulations including the Commonwealth Procurement Rules.

This report contains information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.



## Small business

We support small business participation in the Commonwealth Government procurement market and engage with small businesses wherever appropriate during our work. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance's website. We also recognise the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury's website.

## Other requirements

### Advertising and market research

During 2016–17 we conducted the following advertising campaign:

The OAIC entered into a contract with Wallis Consulting Group to conduct the 2017 Australian Community Attitudes to Privacy Survey (a national survey into Australian's attitudes and behaviours around privacy issues) and to produce a report on the results. The total spend was \$136,363.65 (GST exclusive). Further information on the survey is available on the OAIC website. The open tender was published on AusTender.

### Grant programs

No grant programs took place during 2016–17.

### Fraud

We have a fraud control plan, fraud control policy and guidelines which are made available to all staff through internal communication channels.

### Memoranda of understanding

We receive funding for specific services under a range of memoranda of understanding. Details can be found at Appendix B.

### Disability reporting

Since 1994, Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's State of the Service Report and the APS Statistical Bulletin. These reports are available at [www.apsc.gov.au](http://www.apsc.gov.au). From 2010–11, government departments and agencies have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by the National Disability Strategy 2010–2020, which sets out a ten-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high level two-yearly report will track progress against each of the six outcome areas of the Strategy and present a picture of how people with disability are faring. The first of these reports can be found at [www.dss.gov.au](http://www.dss.gov.au).

## Ecologically sustainable development and environment performance

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires the OAIC to report on how its activities accord with the principles of ecologically sustainable development (ESD). Our role and activities do not directly link with the principles of ESD or impact on the environment other than through our business operations in the consumption of resources required to sustain our operations. We use energy saving methods in the OAIC's operation and endeavour to make the best use of resources.

## Information Publication Scheme

As required by the *Freedom of Information Act 1982*, we have an Information Publication Scheme entry on our website ([www.oaic.gov.au](http://www.oaic.gov.au)) that provides information on our structure, functions, appointments, annual reports, consultation arrangements, FOI officer, information we routinely release following FOI requests and information we routinely provide to the Australian Parliament.

4



## Part 4

### Financial statements



## INDEPENDENT AUDITOR'S REPORT

### To the Attorney-General

#### Opinion

In my opinion, the financial statements of the Office of the Australian Information Commissioner for the year ended 30 June 2017:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Office of the Australian Information Commissioner as at 30 June 2017 and its financial performance and cash flows for the year then ended.

The financial statements of the Office of the Australian Information Commissioner, which I have audited, comprise the following statements as at 30 June 2017 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement; and
- Notes to the financial statements, comprising significant accounting policies and other explanatory information.

#### Basis for Opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Office of the Australian Information Commissioner in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* to the extent that they are not in conflict with the *Auditor-General Act 1997* (the Code). I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

#### Accountable Authority's Responsibility for the Financial Statements

As the Accountable Authority of the Office of the Australian Information Commissioner the Australian Information Commissioner is responsible under the *Public Governance, Performance and Accountability Act 2013* for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under that Act. The Australian Information Commissioner is also responsible for such internal control as the Australian Information Commissioner determines is necessary to enable the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Australian Information Commissioner is responsible for assessing the Office of the Australian Information Commissioner's ability to continue as a going concern, taking into account whether the entity's operations will cease as a result of an administrative restructure or for any other reason. The Australian Information Commissioner is also responsible for disclosing matters related to going concern as applicable and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.

#### **Auditor's Responsibilities for the Audit of the Financial Statements**

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office



Muhammad Qureshi  
Acting Executive Director  
Delegate of the Auditor-General  
Canberra  
8 September 2017

Office of the Australian Information Commissioner

**STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER**

In our opinion, the attached financial statements for the year ended 30 June 2017 comply with subsection 42(2) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act), and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the non-corporate Commonwealth entity will be able to pay its debts as and when they fall due.



Timothy Pilgrim PSM  
Australian Information Commissioner

8 September 2017



Angelene Falk  
Chief Financial Officer

8 September 2017



## Statement of Comprehensive Income

for the period ended 30 June 2017

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
<b>NET COST OF SERVICES</b>				
<b>Expenses</b>				
Employee Benefits	1.1A	8,674	7,844	9,979
Suppliers	1.1B	3,989	3,076	4,453
Depreciation and Amortisation	2.2A	501	519	560
Write-Down and Impairment of Assets	1.1C	2	-	-
<b>Total expenses</b>		<b>13,166</b>	11,439	14,992
<b>Own-Source Income</b>				
<b>Own-source revenue</b>				
Rendering of Services	1.2A	2,824	2,440	3,777
Other Revenue	1.2B	36	33	-
<b>Total own-source revenue</b>		<b>2,860</b>	2,473	3,777
<b>Gains</b>				
Other Gains	1.2C	1	1	33
<b>Total gains</b>		<b>1</b>	1	33
<b>Total own-source income</b>		<b>2,861</b>	2,474	3,810
<b>Net cost of services</b>		<b>(10,305)</b>	(8,965)	(11,182)
Revenue from Government	1.2D	10,618	9,328	10,622
<b>Surplus/(Deficit) attributable to the Australian Government</b>		<b>313</b>	363	(560)
<b>OTHER COMPREHENSIVE INCOME</b>				
<b>Items subject to subsequent reclassification to net cost of services</b>				
Changes in asset revaluation surplus		3	18	-
<b>Total other comprehensive income</b>		<b>3</b>	18	-

The above statement should be read in conjunction with the accompanying notes.

**Budget Variances Commentary**

The major variances on the Statement of Comprehensive Income are employee benefits, suppliers' expenses, depreciation and amortisation, and rendering of services revenue.

A contributor to the Office of the Australian Information Commissioner's (OAIC) financial statement variances in general relates to the Australian Government's 2016–17 Budget decision not to proceed with the previously proposed disbandment of the OAIC and to provide for the OAIC to have ongoing responsibility for privacy and FOI regulation. Ongoing funding for these functions was provided for as a new Budget measure to the OAIC in the 2016–17 Budget.

In the 2016-17 Budget the OAIC received \$10,618,000 as appropriated funding after the whole of government savings measure detailed at Note 3.1A. Of the available funding, \$9,342,000 was the new Budget measure and \$1,276,000 was existing appropriation.

However, as the Supply Act (No.1) 2016-17 excludes new Budget measures the OAIC only received \$533,000 from this Act in July 2016. This is five-twelfths of the existing appropriation. The OAIC received the majority of its appropriated funding, \$10,089,000, via Appropriation Act (No.1) 2016–17 in mid-November 2016. Up until that time the OAIC operated from its cash reserves and prior year available appropriations. During that period the OAIC also moderated its business activities including employee recruitment and the engagement of suppliers, which resulted in a variance between the budgeted and actual activities under these items.

Depreciation and amortisation reflects the review of assets completed during the reporting period.

Rendering of services revenue reflects variations to memorandums of understanding with other government departments during the financial year.

## Statement of Financial Position

as at 30 June 2017

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
<b>ASSETS</b>				
<b>Financial assets</b>				
Cash	2.1A	2,711	665	1,045
Trade and Other Receivables	2.1B	3,588	4,352	4,497
<b>Total financial assets</b>		<b>6,299</b>	5,017	5,542
<b>Non-financial assets</b>				
Infrastructure, Plant and Equipment	2.2A	1,287	1,367	983
Intangibles	2.2A	648	847	630
Other Non-Financial Assets	2.2B	93	72	61
<b>Total non-financial assets</b>		<b>2,028</b>	2,286	1,674
<b>Total assets</b>		<b>8,327</b>	7,303	7,216
<b>LIABILITIES</b>				
<b>Payables</b>				
Suppliers	2.3A	1,011	954	535
Other Payables	2.3B	1,292	686	2,130
<b>Total payables</b>		<b>2,303</b>	1,640	2,665
<b>Non-interest bearing liabilities</b>				
Lease incentives	2.4A	970	1,206	973
<b>Total non-interest bearing liabilities</b>		<b>970</b>	1,206	973
<b>Provisions</b>				
Employee Provisions	4.1A	2,148	1,863	2,029
<b>Total provisions</b>		<b>2,148</b>	1,863	2,029
<b>Total liabilities</b>		<b>5,421</b>	4,709	5,667
<b>Net assets</b>		<b>2,906</b>	2,594	1,549
<b>EQUITY</b>				
Contributed equity		2,013	2,013	1,993
Reserves		154	151	133
Retained surplus/(Accumulated deficit)		739	430	(577)
<b>Total equity</b>		<b>2,906</b>	2,594	1,549

The above statement should be read in conjunction with the accompanying notes.

**Budget Variances Commentary**

The major variances on the Statement of Financial Position are financial assets, non-financial assets, payables and equity.

The cash balance and other receivables reflects a timing difference between funds held in the OAIC's day to day operating bank account and appropriations receivable in the Official Public Account (OPA). The OAIC generally maintains a working bank account balance by transferring funds from the OPA when required. Note 2.1B provides details of the receivables and the Statement of Comprehensive Income outlines key environmental timing differences.

During 2016–17 the OAIC completed a minor office refurbishment which increased the total value of its infrastructure, plant and equipment.

Prepayments are the only other non-financial asset held by the OAIC and includes increased insurance premium and annual subscription costs. The payables variance arose from the OAIC's moderated business activities as outlined on the Statement of Comprehensive Income as well as the timing difference for supplier payables at year-end.

Commentary on equity variance is included on the Statement of Changes in Equity.

## Statement of Changes in Equity

for the period ended 30 June 2017

	2017 \$'000	2016 \$'000	Original Budget \$'000
<b>CONTRIBUTED EQUITY</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	2,013	1,993	1,993
<b>Adjusted opening balance</b>	<b>2,013</b>	<b>1,993</b>	<b>1,993</b>
<b>Transactions with owners</b>			
<b>Contributions by owners</b>			
Departmental capital budget	-	20	-
<b>Total transactions with owners</b>	<b>-</b>	<b>20</b>	<b>-</b>
<b>Closing balance as at 30 June</b>	<b>2,013</b>	<b>2,013</b>	<b>1,993</b>
<b>RETAINED EARNINGS</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	430	(17)	(17)
Other Adjustments	(4)	84	-
<b>Adjusted opening balance</b>	<b>426</b>	<b>67</b>	<b>(17)</b>
<b>Comprehensive income</b>			
Surplus/(Deficit) for the period	313	363	(560)
<b>Total comprehensive income</b>	<b>313</b>	<b>363</b>	<b>(560)</b>
<b>Closing balance as at 30 June</b>	<b>739</b>	<b>430</b>	<b>(577)</b>
<b>ASSET REVALUATION RESERVE</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	151	133	133
<b>Adjusted opening balance</b>	<b>151</b>	<b>133</b>	<b>133</b>
<b>Comprehensive income</b>			
Other comprehensive income	3	18	-
<b>Total comprehensive income</b>	<b>3</b>	<b>18</b>	<b>-</b>
<b>Closing balance as at 30 June</b>	<b>154</b>	<b>151</b>	<b>133</b>
<b>TOTAL EQUITY</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	2,594	2,109	2,109
Other Adjustments	(4)	84	-
<b>Adjusted opening balance</b>	<b>2,590</b>	<b>2,193</b>	<b>2,109</b>

Statement of Changes in Equity (continued)

for the period ended 30 June 2017

	2017 \$'000	2016 \$'000	Original Budget \$'000
<b>Comprehensive income</b>			
Surplus/(Deficit) for the period	313	363	(560)
Other comprehensive income	3	18	-
<b>Total comprehensive income</b>	<b>316</b>	<b>381</b>	<b>(560)</b>
<b>Transactions with owners</b>			
<b>Contributions by owners</b>			
Departmental capital budget	-	20	-
<b>Total transactions with owners</b>	<b>-</b>	<b>20</b>	<b>-</b>
<b>Closing balance as at 30 June</b>	<b>2,906</b>	<b>2,594</b>	<b>1,549</b>

The above statement should be read in conjunction with the accompanying notes.

Accounting Policy

Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

Budget Variances Commentary

The major variance on the Statement of Changes in Equity relates to comprehensive income.

As a non-corporate Commonwealth entity and in accordance with net cash appropriation arrangements the OAIC budgets for a break-even operating result, adjusted for depreciation and amortisation expense. During the reporting period a combination of factors as outlined in the commentary on the Statement of Comprehensive Income resulted in an operating surplus.

## Cash Flow Statement

for the period ended 30 June 2017

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
<b>OPERATING ACTIVITIES</b>				
<b>Cash received</b>				
Appropriations		10,618	9,328	10,622
Cash transferred from the Official Public Account		4,636	1,435	685
Rendering of services		2,711	2,518	3,777
Net GST received		308	270	110
<b>Total cash received</b>		<b>18,273</b>	<b>13,551</b>	<b>15,194</b>
<b>Cash used</b>				
Employees		(8,337)	(7,977)	(8,052)
Suppliers		(4,523)	(3,577)	(4,585)
Section 74 receipts transferred to OPA		(3,148)	(2,566)	(2,537)
<b>Total cash used</b>		<b>(16,008)</b>	<b>(14,120)</b>	<b>(15,174)</b>
<b>Net cash from/(used by) operating activities</b>		<b>2,265</b>	<b>(569)</b>	<b>20</b>
<b>INVESTING ACTIVITIES</b>				
<b>Cash used</b>				
Purchase of infrastructure, plant and equipment		(219)	(29)	(20)
<b>Total cash used</b>		<b>(219)</b>	<b>(29)</b>	<b>(20)</b>
<b>Net cash from/(used by) investing activities</b>		<b>(219)</b>	<b>(29)</b>	<b>(20)</b>
<b>FINANCING ACTIVITIES</b>				
<b>Cash received</b>				
Departmental capital budget		-	20	-
<b>Total cash received</b>		<b>-</b>	<b>20</b>	<b>-</b>
<b>Net cash from/(used by) financing activities</b>		<b>-</b>	<b>20</b>	<b>-</b>
<b>Net increase/(decrease) in cash held</b>		<b>2,046</b>	<b>(578)</b>	<b>-</b>
Cash and cash equivalents at the beginning of the reporting period		665	1,243	1,045
<b>Cash and cash equivalents at the end of the reporting period</b>	2.1A	<b>2,711</b>	<b>665</b>	<b>1,045</b>

The above statement should be read in conjunction with the accompanying notes.

**Budget Variances Commentary**

The major variances on the Cash Flow Statement include cash received, cash used and purchase of infrastructure, plant and equipment.

As outlined in the commentary on the Statement of Comprehensive Income, the timing difference between the receipt of the OAIC’s appropriation from the Supply Act (No.1) 2016–17 and Appropriation Act (No.1) 2016–17 required it to operate from cash reserves and prior year available appropriations. This impacted on all cash received and cash used activities.

As noted on the Statement of Financial Position, the additional purchases of infrastructure, plant and equipment is attributed to the partial office refurbishment during the reporting period.



## Overview

### Objectives of the Office of the Australian Information Commissioner

The Office of the Australian Information Commissioner (OAIC) is an Australian Government controlled entity established under the Australian Information Commissioner Act 2010.

In the 2014–15 Budget, the Australian Government announced that the OAIC would cease operation as part of its commitment to smaller government. New arrangements for privacy and FOI regulation were to commence from 1 January 2015, following passage of legislation to implement these changes. Funding transfers to the Australian Human Rights Commission and other agencies to facilitate these changed arrangements occurred as part of the 2014–15 Budget.

The government decided not to proceed with these proposed changes and the OAIC had ongoing responsibility for privacy and FOI regulation over the reporting period. Ongoing funding for these functions was provided in the 2016–17 Budget. The OAIC is structured to meet the following outcome:

Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of Information Commissioner, freedom of information and privacy functions.

The OAIC activities contributing toward this outcome are classified as departmental. Departmental activities involve the use of assets, liabilities, income and expenses controlled or incurred by the OAIC in its own right.

### The Basis of Preparation

The financial statements are general purpose financial statements and are required by section 42 of the *Public Governance, Performance and Accountability Act 2013*.

The financial statements have been prepared in accordance with:

- a) Public Governance, Performance and Accountability (Financial Reporting) Rule 2015 (FRR) for reporting periods ending on or after 1 July 2015; and
- b) Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.
- c) Australian Accounting Standards and Interpretations – Reduced Disclosure Requirements issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars.

### New Accounting Standards

#### *Adoption of New Australian Accounting Standard Requirements*

No accounting standard has been adopted earlier than the application date as stated in the standard. No new, revised, amending standards and interpretations that were issued prior to the sign-off date and are applicable to the current reporting period have a material effect, or expected to have a future material effect, on the OAIC's financial statements.

Future Australian Accounting Standard Requirements

The following new standards and interpretations were issued by the Australian Accounting Standards Board prior to the signing of the statement by the accountable authority and chief financial officer, which are expected to have a material impact on the OAIC’s financial statements for future reporting period(s):

Standard/ Interpretation	Application date for the OAIC	Nature of impending change/s in accounting policy and likely impact on initial application
AASB 15 Revenue from Contracts with customers	1 January 2018	<p>This standard establishes principles for reporting information about the nature, amount, timing and uncertainty of revenue and cash flows arising from the OAIC’s contracts with customers, with revenue recognised as ‘performance obligations’ are satisfied; and will apply to contracts of NFP entities that are exchange transactions. AASB 1004 Contributions will continue to apply to non-exchange transactions until the Income for NFP project is completed. The effective date was modified by 2015-8 for for-profit entities and 2016-7 Not-For-Profit entities.</p> <p>Depending on the nature of the transaction and the OAIC’s current policy, the new Standard may have a significant impact on the timing of the recognition of revenue. Final outcome will need to be considered once the related Income for NFP project is completed.</p>
2014-5 Amendments to Australian Accounting Standards arising from AASB 15	1 January 2018	<p>This Standard gives effect to the consequential amendments to Australian Accounting Standards (including Interpretations) arising from the issuance of AASB 15.</p>
AASB 16 Leases	1 July 2019	<p>The standard will require the net present value of payments under most operating leases to be recognised as assets and liabilities. An initial assessment indicates that the implementation of the standard may have a substantial impact on the financial statements, however, OAIC is yet to undertake a detailed review.</p>

All other new, revised, amending standards and interpretations that were issued prior to the sign-off date and are applicable to future reporting period(s) are not expected to have a future material impact on the OAIC’s financial statements.

Taxation

The OAIC is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Events After the Reporting Period

The OAIC is not aware of any significant events that have occurred since balance date that warrant disclosure in these financial statements.

## Financial Performance

This section analyses the financial performance of the Office of the Australian Information Commissioner for the year ended 2017.

### 1.1 Expenses

	2017 \$'000	2016 \$'000
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#### 1.1A: Employee Benefits

Wages and salaries	6,730	5,882
Superannuation		
Defined contribution plans	808	667
Defined benefit plans	356	375
Leave and other entitlements	743	750
Separation and redundancies	-	134
Other employee expenses	37	36
<b>Total employee benefits</b>	<b>8,674</b>	<b>7,844</b>

#### Accounting Policy

Accounting policies for employee related expenses is contained in the People and relationships section.

#### 1.1B: Suppliers

##### Goods and services supplied or rendered

Insurance	21	19
Office consumables	21	22
Official travel	281	234
Printing and publications	75	42
Professional services and fees	2,295	1,586
Property outgoings	246	225
Reference materials, subscriptions and licenses	204	136
Staff training	143	133
Telecommunications	27	40
Other	110	73
<b>Total goods and services supplied or rendered</b>	<b>3,423</b>	<b>2,510</b>

**1.1 Expenses (continued)**

	2017 \$'000	2016 \$'000
Goods supplied	299	200
Services rendered	3,124	2,310
<b>Total goods and services supplied or rendered</b>	<b>3,423</b>	<b>2,510</b>
<b>Other suppliers</b>		
Operating lease rentals in connection with		
Related parties		
Sublease	531	531
Workers compensation expenses	35	35
<b>Total other suppliers</b>	<b>566</b>	<b>566</b>
<b>Total suppliers</b>	<b>3,989</b>	<b>3,076</b>

**Leasing commitments**

The OAIC in its capacity as sub-lessee leases office accommodation that is subject to the provisions of the headlease. The initial periods of accommodation are still current and there are two options in the headlease agreement to renew.

**Commitments for minimum lease payments in relation to non-cancellable operating leases are payable as follows:**

Within 1 year	1,220	1,172
Between 1 to 5 years	3,813	5,011
<b>Total operating lease commitments</b>	<b>5,033</b>	<b>6,183</b>

**1.1C: Write-Down and Impairment of Assets**

Impairment of asset	2	-
<b>Total write-down and impairment of assets</b>	<b>2</b>	<b>-</b>

**Accounting Policy**

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease.

## 1.2 Own-Source Revenue and gains

2017	2016
\$'000	\$'000

### OWN-SOURCE REVENUE

#### 1.2A: Rendering of Services

Rendering of services	2,824	2,440
Total sale of goods and rendering of services	2,824	2,440

#### Accounting Policy

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

#### 1.2B: Other Revenue

Remuneration of auditors	36	33
<b>Total other revenue</b>	<b>36</b>	<b>33</b>

#### Accounting Policy

##### *Resources Received Free of Charge*

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as revenue due to their nature.

### GAINS

#### 1.2C: Other Gains

Sale of assets	1	1
<b>Total other gains</b>	<b>1</b>	<b>1</b>

#### Accounting Policy

##### *Sale of Assets*

Gains from disposal of assets are recognised when control of the asset has passed to the buyer.

1.2 Own-Source Revenue and gains (continued)

	2017	2016
	\$'000	\$'000

1.2D: Revenue from Government

Appropriations		
Departmental appropriations	10,618	9,328
<b>Total revenue from Government</b>	<b>10,618</b>	<b>9,328</b>

Accounting Policy

*Revenue from Government*

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the entity gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

## Financial Position

This section analyses the Office of the Australian Information Commissioner's assets used to conduct its operations and the operating liabilities incurred as a result.

Employee related information is disclosed in the People and Relationships section.

### 2.1 Financial Assets

	2017 \$'000	2016 \$'000
--	----------------	----------------

#### 2.1A: Cash

Cash on hand and at bank	2,711	665
<b>Total cash and cash equivalents</b>	<b>2,711</b>	<b>665</b>

#### Accounting Policy

Cash is recognised at its nominal amount. Cash and cash equivalents includes cash on hand.

#### 2.1B: Trade and Other Receivables

##### Goods and services receivables

Goods and services	1,031	321
<b>Total goods and services receivables</b>	<b>1,031</b>	<b>321</b>

##### Appropriations receivables

Appropriations receivables	2,497	3,985
<b>Total appropriations receivables</b>	<b>2,497</b>	<b>3,985</b>

##### Other receivables

GST Receivable from the Australian Taxation Office	60	46
<b>Total other receivables</b>	<b>60</b>	<b>46</b>

<b>Total trade and other receivables (gross)</b>	<b>3,588</b>	<b>4,352</b>
--------------------------------------------------	--------------	--------------

<b>Total trade and other receivables (net)</b>	<b>3,588</b>	<b>4,352</b>
------------------------------------------------	--------------	--------------

##### Trade and other receivables (net) expected to be recovered

No more than 12 months	3,588	4,352
<b>Total trade and other receivables (net)</b>	<b>3,588</b>	<b>4,352</b>

#### Accounting Policy

##### Receivables

Receivables are measured at amortised cost using the effective interest method less impairment.

## 2.2 Non-Financial Assets

### 2.2A: Reconciliation of the Opening and Closing Balances of Infrastructure, Plant and Equipment

#### Reconciliation of the opening and closing balances of Infrastructure, plant and equipment for 2017

	Leasehold Improvements \$'000	Computer, Plant and Equipment \$'000	Computer, Plant and Equipment – Work in Progress \$'000	Total \$'000
<b>As at 1 July 2016</b>				
Gross book value	1,313	27	27	1,367
Accumulated depreciation, amortisation and impairment	-	-	-	-
<b>Total as at 1 July 2016</b>	<b>1,313</b>	<b>27</b>	<b>27</b>	<b>1,367</b>
<b>Additions</b>				
Purchase	201	19	-	220
Work-in-progress transfer	-	27	(27)	-
Revaluations and impairments recognised in other comprehensive income	(2)	5	-	3
Depreciation and amortisation	(262)	(39)	-	(301)
Disposals	(2)	-	-	(2)
<b>Total as at 30 June 2017</b>	<b>1,248</b>	<b>39</b>	<b>-</b>	<b>1,287</b>
<b>Total as at 30 June 2017 represented by</b>				
Gross book value	1,248	39	-	1,287
Accumulated depreciation, amortisation and impairment	-	-	-	-
<b>Total as at 30 June 2017</b>	<b>1,248</b>	<b>39</b>	<b>-</b>	<b>1,287</b>

No indicators of impairment were found for intangibles.

No infrastructure, plant and equipment is expected to be sold or disposed of within the next 12 months.



## 2.2 Non-Financial Assets (continued)

### Revaluations of non-financial assets

All revaluations were conducted in accordance with the revaluation policy stated at Note 2.2. On 30 June 2017, an independent valuer conducted the revaluations.

### Reconciliation of the opening and closing balances of Infrastructure, plant and equipment for 2016

	Leasehold Improvements \$'000	Computer, Plant and Equipment \$'000	Computer, Plant and Equipment – Work in Progress \$'000	Total \$'000
As at 1 July 2015				
Gross book value	1,582	56	-	1,638
Accumulated depreciation, amortisation and impairment	-	-	-	-
Total as at 1 July 2015	1,582	56	-	1,638
Additions				
Purchase			27	27
Revaluations and impairments recognised in other comprehensive income	(5)	23	-	18
Depreciation and amortisation	(264)	(52)	-	(316)
Disposals				
Total as at 30 June 2016	1,313	27	27	1,367
Total as at 30 June 2016 represented by				
Gross book value	1,313	27	27	1,367
Accumulated depreciation, amortisation and impairment	-	-	-	-
Total as at 30 June 2016	1,313	27	27	1,367

## 2.2 Non-Financial Assets (continued)

### Reconciliation of the opening and closing balances of intangibles for 2017

	Intangibles \$'000	Total \$'000
<b>As at 1 July 2016</b>		
Gross book value	2,619	2,619
Accumulated depreciation, amortisation and impairment	(1,772)	(1,772)
<b>Total as at 1 July 2016</b>	<b>847</b>	<b>847</b>
Depreciation and amortisation	(199)	(199)
<b>Total as at 30 June 2017</b>	<b>648</b>	<b>648</b>

### Total as at 30 June 2017 represented by

Gross book value	2,619	2,619
Accumulated depreciation, amortisation and impairment	(1,971)	(1,971)
<b>Total as at 30 June 2017 represented by</b>	<b>648</b>	<b>648</b>

No indicators of impairment were found for intangibles.

No intangibles is expected to be sold or disposed of within the next 12 months.

### Reconciliation of the opening and closing balances of intangibles for 2016

	Intangibles \$'000	Total \$'000
<b>As at 1 July 2015</b>		
Gross book value	2,619	2,619
Accumulated depreciation, amortisation and impairment	(1,569)	(1,569)
<b>Total as at 1 July 2015</b>	<b>1,050</b>	<b>1,050</b>
<b>Additions</b>		
Depreciation and amortisation	(203)	(203)
<b>Total as at 30 June 2016</b>	<b>847</b>	<b>847</b>

### Total as at 30 June 2016 represented by

Gross book value	2,619	2,619
Accumulated depreciation, amortisation and impairment	(1,772)	(1,772)
<b>Total as at 30 June 2016 represented by</b>	<b>847</b>	<b>847</b>

### Accounting Policy

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor's accounts immediately prior to the restructuring.

#### *Asset Recognition Threshold*

Purchases of infrastructure, plant and equipment are recognised initially at cost in the statement of financial position, except for purchases costing less than \$5,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

#### *Revaluations*

Following initial recognition at cost, plant and equipment are carried at fair value. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date was eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

#### *Depreciation*

Depreciable infrastructure, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the OAIC using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2017	2016
Leasehold improvements	Lease term	Lease term
Computer, plant and equipment	4 to 10 years	4 to 10 years

*Impairment*

All assets were assessed for impairment at 30 June 2017. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the OAIC were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

*Derecognition*

An item of plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

*Intangibles*

The OAIC's intangibles comprise software developed for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the OAIC's software are 2 to 5 years (2016: 2 to 5 years).

All software assets were assessed for indications of impairment as at 30 June 2017.

**Accounting Judgements and Estimates**

The fair value of infrastructure, plant and equipment has been taken to be the market value of similar assets as determined by an independent valuer.

2.2 Non-Financial Assets (continued)		
	2017	2016
	\$'000	\$'000

**2.2B: Other Non-Financial Assets**

Prepayments	93	72
<b>Total other non-financial assets</b>	<b>93</b>	<b>72</b>
<b>Other non-financial assets expected to be recovered</b>		
No more than 12 months	93	72
<b>Total other non-financial assets</b>	<b>93</b>	<b>72</b>

No indicators of impairment were found for other non-financial assets.

**2.3 Payables**

	2017	2016
	\$'000	\$'000

**2.3A: Suppliers**

Trade creditors and accruals	644	576
Rent Payable	367	378
<b>Total suppliers</b>	<b>1,011</b>	<b>954</b>
<b>Suppliers expected to be settled</b>		
No more than 12 months	707	639
More than 12 months	304	315
<b>Total suppliers</b>	<b>1,011</b>	<b>954</b>

Settlement is generally made in accordance with the terms of the supplier invoice.

**2.3B: Other Payables**

Salaries and wages	54	24
Superannuation	11	5
Other employee expenses	16	1
Revenue received in advance	1,211	656
<b>Total other payables</b>	<b>1,292</b>	<b>686</b>
<b>Other payables to be settled</b>		
No more than 12 months	1,292	686
<b>Total other payables</b>	<b>1,292</b>	<b>686</b>

2.4 Non-interest Bearing Liabilities

	2017	2016
	\$'000	\$'000

2.4A: Lease incentives

Lease incentives	970	1,206
<b>Total loans</b>	<b>970</b>	<b>1,206</b>

Minimum lease payments expected to be settled

Within 1 year	228	246
Between 1 to 5 years	742	960
<b>Total lease incentives</b>	<b>970</b>	<b>1,206</b>

Accounting Policy

Refer to Note 1.1.B.

# Funding

This section identifies the Office of the Australian Information Commissioner’s funding structure.

## 3.1 Appropriations

### 3.1A: Annual Appropriations ('Recoverable GST exclusive')

#### Annual Appropriations for 2017

Departmental	Annual Appropriation <sup>1</sup> \$'000	Adjustments to appropriation <sup>2</sup> \$'000	Total appropriation \$'000	Appropriation applied in 2017 (current and prior years) \$'000	Variance <sup>3</sup> \$'000
Ordinary annual services	10,618	2,631	13,249	(12,689)	560
<b>Total departmental</b>	<b>10,618</b>	<b>2,631</b>	<b>13,249</b>	<b>(12,689)</b>	<b>560</b>

1. In 2016–17, there was an amount of \$3,653 withheld (Section 51 of the PGPA Act) appropriation relating to the whole of government Govlink savings measure.

2. Adjustments including for PGPA Act Section 74 receipts.

3. Variance represents the application of current and previous years appropriation and own-source revenue.

3.1 Appropriations (continued)

Annual Appropriations for 2016

	Annual Appropriation <sup>1</sup> \$'000	Section 74 Receipts \$'000	Total appropriation \$'000	Appropriation applied in 2017 (current and prior years) \$'000	Variance <sup>2</sup> \$'000
Departmental					
Ordinary annual services	9,335	2,501	11,836	(11,270)	566
Capital Budget <sup>3</sup>	20	-	20	(29)	(9)
Total departmental	9,355	2,501	11,856	(11,299)	557

1. In 2016-17 there was an amount of \$7,428 quarantined appropriation relating to PSSap administration costs.
2. Variance represents the application of current and previous years own-source revenue.
3. Departmental Capital Budgets are appropriated through Appropriation Acts (No.1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts.

3.1B: Unspent Annual Appropriations ('Recoverable GST exclusive')

	2017 \$'000	2016 \$'000
Departmental		
Appropriation Act (No.5) 2014-15	-	2,172
Appropriation Act (No.1) 2015-16	-	1,813
Appropriation Act (No.1) 2016-17	2,497	-
Cash held by the OAIC	2,711	665
Total departmental	5,208	4,650



3.2 Net Cash Appropriation Arrangements			
	2017	2016	
	\$'000	\$'000	
Total comprehensive income/(loss) less depreciation/amortisation expenses previously funded through revenue appropriations	814	900	
Plus: depreciation/amortisation expenses previously funded through revenue appropriation	(501)	(519)	
Total comprehensive income/(loss) - as per the Statement of Comprehensive Income	313	381	

# People and relationships

This section describes a range of employment and post employment benefits provided to our people and our relationships with other key people.

4.1 Employee Provisions		
	2017 \$'000	2016 \$'000
<b>4.1A: Employee Provisions</b>		
Leave	2,148	1,863
<b>Total employee provisions</b>	<b>2,148</b>	<b>1,863</b>
<b>Employee provisions expected to be settled</b>		
No more than 12 months	1,690	1,278
More than 12 months	458	585
<b>Total employee provisions</b>	<b>2,148</b>	<b>1,863</b>

## Accounting policy

Liabilities for short-term employee benefits and termination benefits expected within twelve months of the end of reporting period are measured at their nominal amounts.

### Leave

The liability for employee benefits includes provision for annual leave and long service leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the OAIC's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the work of an actuary performed for the Department of Finance (DoF) and summarised in the Standard Parameters for use in 2016-17 Financial Statements published on the DoF website. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

### Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The OAIC recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

### Superannuation

The OAIC's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), or the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian Government.

**Accounting policy (continued)**

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in the Department of Finance's administered schedules and notes.

The OAIC makes employer contributions to the employees' defined benefit superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The OAIC accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the financial year.

**Accounting Judgements and Estimates**

The long service leave has been estimated in accordance with the FRR taking into account expected salary growth, attrition and future discounting using the government bond rate.

**4.2 Key Management Personnel Remuneration**

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the OAIC, directly or indirectly, including any director (whether executive or otherwise) of the OAIC. The OAIC has determined the key management personnel to be the Australian Information Commissioner and Senior Executive Service Officers. Key management personnel remuneration is reported in the table below:

	2017 \$'000	2016 \$'000
Short-term employee benefits	958	857
Post-employment benefits	119	122
Other long-term employee benefits	115	86
Termination benefits	-	-
<b>Total key management personnel remuneration expenses<sup>1</sup></b>	<b>1,192</b>	<b>1,065</b>

The total number of key management personnel that are included in the above table are 4 (2016: 4).

1. The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the entity.

4.3 Related Party Disclosures

**Related party relationships:**

The OAIC is an Australian Government controlled entity. Related parties to this entity are Key Management Personnel including the Portfolio Minister and Executive, and other Australian Government entities.

**Transactions with related parties:**

Given the breadth of Government activities, related parties may transact with the government sector in the same capacity as ordinary citizens. Such transactions include the payment or refund of taxes, receipt of a Medicare rebate or higher education loans. These transactions have not been separately disclosed in this note.

Significant transactions with related parties can include:

- the payments of grants or loans;
- purchases of goods and services;
- asset purchases, sales transfers or leases;
- debts forgiven; and
- guarantees.

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the entity, it has been determined that there are no related party transactions to be separately disclosed.

## Managing uncertainties

This section analyses how the Office of the Australian Information Commissioner manages financial risks within its operating environment.

### 5.1 Contingent Assets and Liabilities

#### Quantifiable Contingencies

As at 30 June 2017 the Office of the Australian Information Commissioner had no quantifiable contingent liabilities.

#### Unquantifiable Contingencies

As at 30 June 2017 the Australian Information Commissioner (AIC) was a respondent to five (5) matters and an applicant in one (1) in the Federal Court of Australia (FCA) and a respondent in one (1) matter in the Federal Circuit Court (FCC).

The six (6) matters before the federal courts in which the AIC was a respondent are Administrative Decisions (Judicial Review) Act 1977 (ADJR) reviews of decisions to finalise privacy complaints, Information Commissioner reviews and decisions on FOI requests to the OAIC.

In relation to the applicant proceeding in the FCA, the AIC has, under section 55H of the Freedom of Information Act 1982 referred a question of law to the court.

Although the federal courts may award costs, the AIC's exposure to a costs order is highly unlikely in all bar one matter, based on current legal advice. It is not possible to estimate the amounts of payment(s) that may be required in relation to the one matter where a costs order may materialise at the conclusion of the matter.

The AIC is also a respondent to six (6) matters in the Administrative Appeals Tribunal, five (5) of which are in relation to determinations made by the AIC under section 52 of the Privacy Act 1988 and the other in relation to an FOI request decision by the OAIC. However, as the Tribunal is a 'no costs' jurisdiction consideration of contingent liabilities is not necessary in these matters.

#### Accounting Policy

**Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.**

5.2 Financial Instruments

2017	2016
\$'000	\$'000

5.2A: Categories of Financial Instruments

Financial Assets

Receivables

Cash on hand and at bank	2,711	665
Trade and other receivables	1,031	321

<b>Total receivables</b>	<b>3,742</b>	986
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<b>Total financial assets</b>	<b>3,742</b>	986
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Financial Liabilities

Other financial liabilities

Trade creditors and accruals	1,011	576
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<b>Total financial liabilities measured at amortised cost</b>	<b>1,011</b>	576
---------------------------------------------------------------	--------------	-----

<b>Total financial liabilities<sup>1</sup></b>	<b>1,011</b>	576
------------------------------------------------	--------------	-----

1. Carrying amount is equal/approximate to fair value.

**Accounting Policy***Financial assets*

The OAC classifies its financial assets in the following categories as receivables.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. Financial assets are recognised and derecognised upon trade date.

*Effective Interest Method*

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

*Receivables*

Trade and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'receivables'. Receivables are measured at amortised cost using the effective interest method less impairment.

*Impairment of Financial Assets*

Financial assets are assessed for impairment at the end of each reporting period.

Financial assets held at cost – if there is objective evidence that an impairment loss has been incurred, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

*Financial liabilities*

Financial liabilities are classified as other financial liabilities. Financial liabilities are recognised and derecognised upon trade date.

*Other Financial Liabilities*

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs. These liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective interest basis.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

5.3 Fair Value Measurement

The following tables provide an analysis of assets and liabilities that are measured at fair value.

The different levels of the fair value hierarchy are defined below.

Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities that the entity can access at measurement date.

Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3: Unobservable inputs for the asset or liability.

Accounting Policy

The OAIC deems transfers between levels of the fair value hierarchy to have occurred at the end of the reporting period. There were no transfers in or out of any levels during the reporting period.

5.3A: Fair Value Measurement

Fair value measurements at the end of the reporting period			Valuation Technique(s) and Inputs Used
2017 \$'000	2016 \$'000	Category (Level 1, 2 or 3) <sup>2</sup>	

Non-financial assets<sup>1</sup>

Infrastructure, plant and equipment	1,287	1,340	2	Market approach. Market replacement cost less estimate of written down value of asset used.
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1. There was no non-financial assets where the highest and best use differed from its current use during the reporting period.





5



Appendix A: Agency resource statement and resources for outcomes	152
Appendix B: Memoranda of understanding	155
Appendix C: Privacy statistics	158
Appendix D: FOI statistics	162
Appendix E: Acronyms and abbreviations	183
Appendix F: Correction of material errors	186
Appendix G: Index	187
Appendix H: Requirements	200

## Part 5

### Appendices

Appendix A: Agency resource  
statement and resources  
for outcomes

**Table A.1: Office of the Australian Information Commissioner resource statement 2016–17\***

		ACTUAL AVAILABLE APPROPRIATION FOR 2016–17 \$'000	PAYMENTS MADE 2016–17 \$'000	ACTUAL AVAILABLE APPROPRIATION FOR 2016–17 \$'000
		(a)	(b)	(a) - (b)
Ordinary Annual Services <sup>1</sup>				
Departmental appropriation		19,045	13,837	5,208
<b>Total</b>		<b>19,045</b>	<b>13,837</b>	<b>5,208</b>
Administered expenses		—	—	
<b>Total ordinary annual services</b>	<b>A</b>	<b>19,045</b>	<b>13,837</b>	
Other services				
Administered expenses		—	—	
Departmental non-operating		—	—	
Administered non-operating		—	—	
<b>Total</b>		—	—	
<b>Total other services</b>	<b>B</b>	—	—	
<b>Total available annual appropriations and payments</b>				
Special appropriations		—	—	
Special appropriations limited by criteria/entitlement		—	—	
<b>Total special appropriations</b>	<b>C</b>	—	—	
Special Accounts		—	—	
<b>Total Special Account</b>	<b>D</b>	N/A	N/A	
Total resourcing and payments A + B + C + D		19,045	13,837	
Less appropriations drawn from annual or special appropriations above and credited to special accounts		N/A	N/A	
And/or payments to corporate entities through annual appropriations		N/A	N/A	
<b>Total net resourcing and payments for the Office of the Australian Information Commissioner</b>		<b>19,045</b>	<b>13,837</b>	

1 Appropriation Act (No.1) 2016–17 and Appropriation Act (No.3) 2015–16 and Appropriation Act (No. 5) 2014–15. Includes prior year departmental appropriation and section 74 Retained Revenue Receipts.

\* All figures are GST exclusive.

Table A.2: Office of the Australian Information Commissioner resource statement 2016–17

	BUDGET 2016–17 \$'000	ACTUAL EXPENSES 2016–17 \$'000	VARIATION 2016–17 \$'000
	(a)	(b)	(a) - (b)
<b>Outcome 1</b>			
<i>Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of information commissioner, freedom of information and privacy functions</i>			
<b>Program 1.1</b>			
Complaint handling, compliance and monitoring, and education and promotion			
Administered expenses	—	—	—
Departmental expenses			
Departmental appropriation <sup>1</sup>	14,395	12,662	1,733
Special appropriations	—	—	—
Special Accounts	—	—	—
Expenses not requiring appropriation in the Budget year	593	503	90
<b>Total for Program 1.1</b>	<b>14,988</b>	<b>13,165</b>	<b>1,823</b>
<b>Outcome 1 Totals by appropriation type</b>			
Administered Expenses	—	—	—
Departmental expenses			
Departmental appropriation <sup>1</sup>	14,395	12,662	1,733
Special appropriations	—	—	—
Special Accounts	—	—	—
Expenses not requiring appropriation in the Budget year	593	503	90
<b>Total expenses for Outcome 1</b>	<b>14,988</b>	<b>13,165</b>	<b>1,823</b>
	2016-17	2016-17	
<b>Average Staffing Level (number)</b>	<b>75</b>	<b>71</b>	<b>4</b>

1 Departmental Appropriation combines Ordinary annual services (Appropriation Act Nos. 1, 3 and 5) and Retained Revenue Receipts under section 74 of the PGPA Act 2013.

## Appendix B: Memoranda of understanding

### Australian Bureau of Statistics

This year we entered into an MOU with the Australian Bureau of Statistics (ABS) to provide privacy advice tailored to the needs of the ABS.

For this service, we received \$25,000.00 (GST exclusive) from the ABS.

### Australian Digital Health Agency

In July 2016, the Australian Digital Health Agency (the Agency) became the My Health Record System Operator. This year we entered into an MOU with the Agency and worked closely with the Agency to provide support and assistance on privacy matters relating to both the Healthcare Identifiers (HI) Service and My Health Record system.

For the HI Service, we provide the following services:

- respond to privacy enquiries and complaints
- investigate cases of misuse of healthcare identifiers
- receive data breach notifications
- conduct privacy assessments
- provide guidance material
- liaise and coordinate on privacy related matters and activities with key stakeholders
- provide policy advice
- monitor and participate in digital health developments.

For the My Health Record system, we provide the following services:

- respond to enquiries and complaints relating to the privacy aspects of the My Health Record system
- investigate acts and practices that may have been a contravention of the My Health Record system
- receive data breach notifications and provide advice
- investigate failures to notify data breaches
- conduct privacy assessments
- provided guidance material for individuals and participants in the My Health Record system
- liaise and coordinate on privacy related matters and activities with key stakeholders

- prepare relevant communication and media materials
- provide policy and legislation advice
- monitor and participate in digital health developments.

For these combined services, we received \$2,076,649.94 (GST exclusive) from the Agency.

## Australian Human Rights Commission

The Australian Human Rights Commission (AHRC) continued to provide a number of corporate services to our office this year. The corporate services included financial, administrative, information technology and human resource related tasks. As a part of this, we also sub-let premises in Sydney from the AHRC.

For the corporate services we paid \$1,050,010 (GST exclusive), and for the premises (including outgoing) we paid \$1,029,214.23 (GST exclusive) to the AHRC.

## ACT Government

As a part of our three year MOU with the ACT Government we continued to provide privacy services to ACT public sector agencies. These services included:

- handling privacy complaints and enquiries about ACT public sector agencies in relation to the Information Privacy Act 2014 and its Territory Privacy Principles (TPPs)
- providing policy and legislation advice
- providing advice on data breach notifications, where applicable
- carrying out privacy assessments
- providing access to privacy seminars.

For these services, we received \$175,131.77 (GST exclusive) from the ACT Government.

## Department of Education and Training

We continued to support the Department of Education and Training with their Student Identifier (SI) initiative, providing expert and timely advice on privacy matters. Our services to the department this year included:

- Advice on Data Breach Response Plan
- Advice on Data Access Guidelines
- Completion of an assessment of the SI Office to determine whether the SI Office is managing personal information as required by APPs 1 and 5
- Design and development of an online questionnaire for the assessment of Registered Training Organisation against APPs 1 and 5.

For these services, we received \$114,000.00 (GST exclusive).



## Department of Immigration and Border Protection

Under our MOU with the Department of Immigration and Border Protection (DIBP) we commenced a Passenger Name Record (PNR) data related assessment which follows up the implementation of recommendations made in a previous assessment undertaken in 2015. The assessment also considers DIBP's practices concerning the destruction and de-identification of PNR data.

For these services, we received \$65,000.00 (including GST).

Note: The agreement between Australia and the European Union (EU) on the processing and transfer of Passenger Name Record data states that 'The Australian Customs and Border Protection Service has arrangements in place under the Privacy Act for the Australian Information Commissioner to undertake regular formal audits of all aspects of Australian Customs and Border Protection Service's EU-sourced PNR data use, handling and access policies and procedures.'

## Department of Human Services

As a part of our ongoing work with the Department of Human Services, we continued to provide general privacy services and support to the Department of Human Services. Our work included:

- Advice on the updated DHS Privacy Policy
- Advice on the operation of the APPs with respect to a Draft Practice Direction issued by the Administrative Appeals Tribunal (Social Services And Child Support Division)
- Advice on the Privacy Impact Assessment for the Welfare Payment Transformation Program
- Review of 29 data breach notifications by DHS under s 75 of the *My Health Records Act 2012* (Cth)

For these services, we received \$220,000.00 (GST exclusive) from the Department of Human Services.

# Appendix C: Privacy statistics

Table C.1: Issues in complaints: APPs

APP ISSUES	NO. OF COMPLAINTS	%
Openness and transparency	8	0.3
Anonymity and pseudonymity	12	0.5
Collection	274	11.0
Unsolicited personal information	6	0.24
Notification of collection	71	2.9
Use or disclosure	794	31.9
Direct marketing	108	4.3
Cross-border disclosure	5	0.20
Government identifiers	4	0.16
Quality of personal information	210	8.4
Security of personal information	493	19.8
Access to personal information	420	16.9
Correction	32	1.3

**Table C.2:** The main remedies agreed in conciliated complaints in 2016–17

REMEDY*	APPS**	CREDIT	SPENT CONVICTIONS	TFN	TOTALS
Access provided	198	3	0	1	202
Record amended	76	69	0	0	145
Compensation	110	6	1	1	118
Apology	125	9	0	0	134
Changed procedures	101	3	0	2	106
Staff training	29	0	0	0	29
Other or confidential	121	23	0	0	144

\* Each complaint resolved may involve more than 1 remedy type.

\*\*Includes NPP, IPP and ACT TPP complaints

**Table C.3:**

COMPENSATION AMOUNTS	APPS**	CREDIT	SPENT CONVICTIONS	TFN	TOTALS
Up to \$1000	27	3	0	0	30
\$1001 to \$5000	52	6	0	1	59
\$5001 to \$10,000	28	0	1	0	28
Over \$10,001	17	0	1	0	18

\*\* Includes NPP, IPP and ACT TPP complaints

Table C.4: Privacy assessments

	ASSESSMENT SUBJECT	NO. ENTITIES ASSESSED	YEAR OPENED	DATE CLOSED
1	Comcare	1	2015–16	Sep–16
2	Department of Immigration and Border Protection (Advanced Passenger Processing)	1	2015–16	Oct–16
3	Department of Immigration and Border Protection (Smartgate)	1	2015–16	Oct–16
4	Universal Student Identifier (USI) — APPs 1 and 5	1	2015–16	Dec–16
5	Telstra: requests for information by law enforcement agencies — APP 11	1	2015–16	Dec–16
6	Department of Immigration and Border Protection (Contractual arrangements)	1	2015–16	Ongoing
7	Follow up with Optus — ss 306 and 306A obligations	1	2016–17	Sep–16
8	Follow up with iiNet — ss 306 and 306A obligations	1	2016–17	Dec–16
9	Vodafone: requests for information by law enforcement agencies — APP 11	1	2016–17	Feb–17
10	Optus: requests for information by law enforcement agencies — APP 11	1	2016–17	Jun–17
11	Follow up with Vodafone — ss 306 and 306A obligations	1	2016–17	Jul–17
12	Document Verification Service — gateway service providers	2	2016–17	Ongoing
13	Department of Immigration and Border Protection (SmartGate security)	1	2016–17	Ongoing
14	Department of Immigration and Border Protection (third party provider)	1	2016–17	Ongoing
15	Department of Immigration and Border Protection (SmartGate APP 12)	1	2016–17	Ongoing
16	Loyalty program	2	2016–17	Ongoing

	ASSESSMENT SUBJECT	NO. ENTITIES ASSESSED	YEAR OPENED	DATE CLOSED
17	ACT Government — Access Canberra	1	2016–17	Ongoing
18	iiNet: requests for information by law enforcement agencies — APP 11	1	2016–17	Ongoing
19	Tax file numbers publishing agencies	7	2016–17	Ongoing
20	Department of Immigration and Border Protection (Passenger name record)	1	2016–17	Ongoing

**Table C.5: Digital health assessments**

	ASSESSMENT SUBJECT	NO. ENTITIES ASSESSED	YEAR OPENED	CLOSED
	Follow up assessment of the implementation of recommendations made in the 2015 OAIC audit of the National Repositories Service	1	2015–16	Sep–2016
	Assessment of the Australian Health Practitioner Regulation Agency’s handling of healthcare identifiers and associated personal information — APPs 10 and 11	1	2015–16	Oct–2016
	Assessment of the Department of Human Services for services related to the My Health Record system — APP 1.2	1	2016–17	Ongoing

## Appendix D: FOI statistics

This appendix has been prepared using data collected from ministers and agencies subject to the FOI Act, and separately from the Administrative Appeals Tribunal and from our own records. Ministers and agencies are required to provide, among other details, information about:

- the number of FOI requests made to them
- the number of decisions they made granting, partially granting or refusing access, and the number and outcome of applications for internal review
- the number and outcome of requests to them to amend personal records
- charges collected by them.

The full data set given by ministers and agencies for the preparation of this appendix is published on [data.gov.au](https://data.gov.au).

Table D.1: Number of FOI requests received — top 20 and others

AGENCY	2015-16			2016-17		
	PERSONAL	OTHER	TOTAL [*)	PERSONAL	OTHER	TOTAL
Department of Immigration and Border Protection	20,889	590	21,479	17,702	516	18,218
Department of Human Services	4,573	114	4,687	7,164	293	7,457
Department of Veterans' Affairs	3,318	20	3,338	3,067	28	3,095
Administrative Appeals Tribunal	1,406	8	1,414	1,547	17	1,564
Northern Australian Infrastructure Facility	-	-	-	0	1,367	1,367
Australian Taxation Office	586	518	1,104	599	515	1,114
Australian Federal Police	446	175	621	438	201	639
Immigration Assessment Authority	-	-	-	402	0	402
Department of Defence	114	274	388	151	233	384
Department of Health	1	271	272	4	333	337
Department of the Treasury	6	130	136	0	224	224
Department of Foreign Affairs and Trade	90	184	274	76	146	222
Attorney-General's Department	47	175	222	51	164	215
Department of the Prime Minister and Cabinet	5	226	231	1	197	198

AGENCY	2015–16			2016–17		
	PERSONAL	OTHER	TOTAL [*]	PERSONAL	OTHER	TOTAL
Australian Securities and Investments Commission	43	199	242	69	125	194
Department of Employment	155	52	207	107	66	173
Commonwealth Ombudsman	-	-	-	158	13	171
Department of Social Services	77	83	160	68	99	167
Australian Transaction Reports and Analysis Centre (AUSTRAC)	110	30	140	119	47	166
Department of Finance	4	144	148	13	146	159
Total — Top 20	32,186^	3,418^	35,604^	31,736	4,730	36,466
Remaining agencies and Ministers	698	1,694	2,392	647	2,406	3,053
<b>Total</b>	<b>32,884</b>	<b>5,112</b>	<b>37,996</b>	<b>32,383</b>	<b>7,136</b>	<b>39,519</b>

^ Shows the total for the top 20 agencies in 2015–16 (i.e. includes figures for agencies that are not in the top 20 agencies in 2016–17).

[\*] Number in brackets after 2015–16 totals indicates the agency ranking for that year where not the same as 2016–17.



Table D.2: FOI requests determined — top 20 and others

AGENCY	GRANTED IN FULL	%	GRANTED IN PART	%	REFUSED	%	TOTAL
Department of Immigration and Border Protection	11,230	62.48	5,828	32.43	915	5.09	17,973
Department of Human Services	2,728	41.96	3,142	48.32	632	9.72	6,502
Department of Veterans' Affairs	2,735	97.92	31	1.11	27	0.97	2,793
Administrative Appeals Tribunal	892	81.83	172	15.78	26	2.39	1,090
Australian Taxation Office	111	12.97	566	66.12	179	20.91	856
Australian Federal Police	32	5.62	383	67.31	154	27.06	569
Department of Defence	61	19.87	173	56.35	73	23.78	307
Immigration Assessment Authority	229	80.63	38	13.38	17	5.99	284
Department of Health	48	28.57	58	34.52	62	36.90	168
Australian Securities and Investments Commission	22	14.47	62	40.79	68	44.74	152
Commonwealth Ombudsman	22	14.86	80	54.05	46	31.08	148
Australian Transaction Reports and Analysis Centre	59	40.14	56	38.10	32	21.77	147
Department of Employment	59	45.04	47	35.88	25	19.08	131
Department of the Prime Minister and Cabinet	17	13.08	47	36.15	66	50.77	130
Attorney Generals' Department	12	9.38	41	32.03	75	58.59	128

AGENCY	GRANTED IN FULL	%	GRANTED IN PART	%	REFUSED	%	TOTAL
Department of Foreign Affairs and Trade	16	12.80	58	46.40	51	40.80	125
Comcare	33	28.45	43	37.07	40	34.48	116
Trade Marks Office	26	22.41	84	72.41	6	5.17	116
Australlian Postal Corporation	20	18.02	53	47.75	38	34.23	111
Department of the Environment and Energy	12	10.91	82	74.55	16	14.55	110
Total - Top 20	18,364	57.47	11,044	34.56	2,548	7.97	31,956
Remaining agencies and Ministers	513	24.75	723	34.88	837	40.38	2,073
Total	18,877	55.47	11,767	34.58	3,385	9.95	34,029

**Table D.3: Use of exemptions in FOI decisions in 2016–17**

FOI ACT REFERENCE	EXEMPTION	PERSONAL	OTHER	TOTAL	%
s 33	Documents affecting national security, defence or international relations	478	129	607	4.41
s 34	Cabinet documents	0	67	67	0.49
s 37	Documents affecting enforcement of law and protection of public safety	717	191	908	6.60
s 38	Documents to which secrecy provisions of enactments apply	638	209	847	6.16
s 42	Documents subject to legal professional privilege	253	139	392	2.85
s 45	Documents containing material obtained in confidence	174	125	299	2.17
s 45A	Parliamentary Budget Office documents	1	2	3	0.02
s 46	Documents disclosure of which would be contempt of Parliament or contempt of court	11	18	29	0.21
s 47	Documents disclosing trade secrets or commercially valuable information	37	106	143	1.04
s 47A	Electoral rolls and related documents	11	4	15	0.11
s 47B	Commonwealth-State relations	67	55	122	0.89
s 47C	Deliberative processes	313	345	658	4.78
s 47D	Financial or property interests of the Commonwealth	25	20	45	0.33
s 47E	Certain operations of agencies	1,962	579	2,541	18.47
s 47F	Personal privacy	5,705	886	6,591	47.90
s 47G	Business	186	306	492	3.58
s 47H	Research	1	0	1	0.01
s 47J	The economy	0	0	0	-

**Table D.4: Reliance on exemptions by percentage from 2014–15 to 2016–17**

This table shows the percentage use of each exemption category in relation to all exemptions claimed. A dash is shown where the exemption was not used or it is less than 0.1 %.

EXEMPTION	2014–15 %	2015–16 %	2016–17 %
s 33	4.6	5	4.4
s 34	0.6	0.6	0.5
s 37	12.2	8.8	6.6
s 38	5	6.1	6.2
s 42	2.2	2.6	2.8
s 45	2.3	1.8	2.2
s 45A	-	-	-
s 46	0.1	0.2	0.2
s 47	1.1	0.8	1.0
s 47A	-	0.1	0.1
s 47B	1	1.2	0.9
s 47C	4.7	4.3	4.8
s 47D	0.1	0.1	0.3
s 47E	13.9	19.8	18.5
s 47F	47.6	44.6	47.9
s 47G	4.3	4	3.6
s 47H	-	-	-
s 47J	-	-	-

**Table D.5: Use of practical refusal 2016–17**

PRACTICAL REFUSAL PROCESSING STEP	PERSONAL	OTHER	TOTAL	%
Notified in writing of intention to refuse request	834	732	1,566	-
Request was subsequently refused or withdrawn	560	473	1,033	66
Request was subsequently processed	274	259	533	34

Table D.6: Time taken to respond to FOI requests

RESPONSE TIME	2015-16			2016-17		
	PERSONAL	OTHER	TOTAL	PERSONAL	OTHER	TOTAL
Within applicable statutory time period	23,170	3,099	26,269	16,343	3,264	19,607
1 — 30 days over	3,453	313	3,766	3,475	325	3,800
31 — 60 days over	1,129	149	1,278	2,746	83	2,829
61 — 90 days over	632	63	695	2,549	46	2,595
90 + days over	1,063	102	1,165	5,006	192	5,198
Total	29,447	3,726	33,173	30,119	3,910	34,029

Table D.7: Determinations of FOI requests for amendment of personal records

DECISION	2013-14		2014-15		2015-16		2016-17	
		%		%		%		%
Requests granted: amend record	2,040	61.8	1,624	63.9	1,497	60.2	625	55.6
Requests granted: annotate record	208	6.3	203	8.0	154	6.2	136	12.1
Requests granted: amend and annotate record	-	-	2	0.1	1	-	3	0.3
Requests refused	1,055	31.9	713	28.0	835	33.6	360	32.0
Total decided	3,303	100	2,542	100	2,487	100	1,124	100

# Charges

Section 29 of the FOI Act provides for an agency or minister to impose charges for costs associated with processing some FOI requests. There is no charge for making an application.

Under the *Freedom of Information (Charges) Regulations 1982*, charges apply only to an initial access decision under Part III of the FOI Act. Charges that agencies can impose include costs associated with search and retrieval time, collating information and photocopying. An applicant may request that a charge be reduced or not imposed, and the agency must consider that request.

Table D.10: Charges collected 2016–17 — top 20 agencies and others

AGENCY	REQUESTS RECEIVED	REQUESTS WHERE CHARGES WERE NOTIFIED	TOTAL CHARGES NOTIFIED \$	TOTAL CHARGES COLLECTED \$
Department of Health	337	134	97,831	21,984
Department of Education and Training	157	73	29,585	12,891
Australian Taxation Office	1,114	21	10,248	9,668
Department of Foreign Affairs and Trade	222	81	29,185	9,007
Department of the Environment and Energy	129	31	18,440	8,534
Department of Defence	384	67	14,237	6,857
Department of the Prime Minister and Cabinet	198	21	9,584	5,535
Department of Finance	159	48	35,894	4,911
Civil Aviation Safety Authority	113	31	13,529	4,581
Australian Transaction Reports and Analysis Centre (AUSTRAC)	166	11	4,455	4,326
Department of Veterans' Affairs	3,095	57	4,578	4,196
Department of Human Services	7,457	121	20,270	3,989
Department of Industry, Innovation and Science	87	15	6,914	3,482
Food Standards Australia New Zealand	10	4	6,282	3,415

AGENCY	REQUESTS RECEIVED	REQUESTS WHERE CHARGES WERE NOTIFIED	TOTAL CHARGES NOTIFIED \$	TOTAL CHARGES COLLECTED \$
Department of Agriculture and Water Resources	85	21	9,941	3,392
Department of Infrastructure and Regional Development	109	24	11,095	3,185
Australian Competition and Consumer Commission	61	20	6,726	2,801
Clean Energy Regulator	22	4	2,407	2,407
Australian Bureau of Statistics	63	13	12,419	2,388
Attorney-General's Department	215	17	18,214	2,245
Total - Top 20	14,183	814	36,1834	119,794
Remaining agencies and ministers	25,336	503	143,560	27,249
Total	39,519	1317	505,394	147,043



# Disclosure log

All Australian Government agencies and ministers that are subject to the FOI Act are required to maintain an FOI disclosure log on their website. The disclosure log lists information that has been released to FOI applicants, subject to some exceptions (such as personal information).

In 2016–17, 98 agencies and ministers provided information on disclosure log activity (up from 89 in 2015–16). Collectively, they listed 958 documents on their disclosure logs and counted 59,738 page views.

# Review of FOI decisions

Under the FOI Act, an applicant who is dissatisfied with the decision of an agency on their initial FOI request has several avenues of review or redress.

A person who is dissatisfied with an agency’s access grant or access refusal decision can either apply for internal review or IC review of that decision.

**Table D.11: Internal agency review of decisions — outcomes**

INTERNAL AGENCY REVIEW DECISION	PERSONAL	OTHER	2016–17 TOTAL
Decisions affirmed	149	145	294
Access granted in full	68	18	86
Access granted in part	142	60	202
Access granted after deferment	5	2	7
Access granted in another form	9	2	11
Charges reduced	1	15	16
Lesser access	3	7	10
Withdrawn without concession	16	17	33
<b>Total</b>	<b>393</b>	<b>266</b>	<b>659</b>

# Information Commissioner review of FOI decisions

Table D.12: Top 20 IC review applications received

AGENCY	TOTAL FOI REQUESTS RECEIVED BY AGENCY	ACCESS REFUSAL DECISIONS	ACCESS GRANT DECISIONS	TOTAL IC REVIEWS
Department of Immigration and Border Protection	18,218	140	0	140
Department of Human Services	7,457	91	0	91
Australian Taxation Office	1,114	46	0	46
Australian Securities and Investments Commission	194	19	8	27
Australian Federal Police	639	26	1	27
Department of Defence	384	25	2	27
Department of Health	337	17	1	18
Department of the Prime Minister and Cabinet	198	16	0	16
Department of Foreign Affairs and Trade	222	16	0	16
Prime Minister of Australia	63	14	0	14
Attorney-General's Department	215	11	0	11
Australian Sports Anti-Doping Authority	39	9	0	9

AGENCY	TOTAL FOI REQUESTS RECEIVED BY AGENCY	ACCESS REFUSAL DECISIONS	ACCESS GRANT DECISIONS	TOTAL IC REVIEWS
Commonwealth Ombudsman	171	7	0	7
Department of the Treasury	224	7	0	7
Department of Veterans' Affairs	3,095	6	1	7
Department of Employment	173	6	0	6
Department of the Environment and Energy	129	5	1	6
Australian Postal Corporation	125	6	0	6
Civil Aviation Safety Authority	94	6	0	6
Australian Human Rights Commission	55	5	1	6
Subtotal	33,146	478	15	493
Remaining agencies/ministers	6,373	131	8	139
<b>Total</b>	<b>39,519</b>	<b>609</b>	<b>23</b>	<b>632</b>

Table D.13: IC review outcomes 2013–14 to 2016–17 and % change from 2015–16 to 2016–17

INFORMATION COMMISSIONER DECISIONS	2013–14	2014–15	2015–16	2016–17	% OF 2016–17 TOTAL
s 54N — out of jurisdiction or invalid	59	37	44	34	6.60
s 54R — withdrawn	111	59	81	115	22.33
s 54R — withdrawn/conciliated	71	51	78	93	18.06
s 54W(a) — deemed acceptance of PV/appraisal	27	26	7	0	0
s 54W(a)(i) — frivolous, vexatious, misconceived, lacking in substance, or not in good faith	170	87	94	66	12.82
s 54W(a)(ii) — failure to cooperate	62	19	7	57	11.07
s 54W(a)(iii) — lost contact	0	5	5	3	0.58
s 54W(b) — refer AAT	41	61	32	15	2.91
s 55F — set aside by agreement	1	0	2	7	1.36
s 55F — varied by agreement	1	2	7	5	0.97
s 55F — affirmed by agreement	1	2	1	1	0.19
s 55G — substituted	4	5	16	15	2.91
s 55K — affirmed by IC	32	48	28	48	9.32
s 55K — affirmed by IC following revised decision during IC review	8	5	11	17	3.30
s 55K — set aside by IC	53	52	22	23	4.47
s 55K — varied by IC	5	23	19	16	3.11
<b>Total</b>	<b>646</b>	<b>482</b>	<b>454</b>	<b>515</b>	<b>100%</b>

## Administrative Appeals Tribunal review

An application may be made to the AAT for review of the Commissioner's IC review decisions and where the Commissioner has indicated a matter is better dealt with directly by the AAT.

As with IC review, the AAT conducts a merits review process. The AAT's decisions are appealable to the Federal Court of Australia, but only on a question of law.

**Table D.14: Applications to AAT for FOI review in 2016–17**

AGENCY	APPLICATIONS
Aged Care Complaints Commissioner	1
Austrade	1
Australian Fisheries Management Authority	2
Australian Health Practitioner Regulation Agency	1
Australian Postal Corporation	1
Australian Securities and Investments Commission	1
Australian Sports Commission	1
Australian Taxation Office	7
Bureau of Meteorology	1
Department of Defence	4
Department of the Environment and Energy	2
Department of Foreign Affairs and Trade	1
Department of Human Services	1
Department of Immigration and Border Protection	9
Department of Veterans' Affairs	1
Minister for Communications and the Arts	1
Prime Minister of Australia	3
Office of the Australian Information Commissioner (vexatious applicant declaration)	1
<b>Total</b>	<b>39</b>

Table D.15: Outcomes of FOI reviews finalised by the AAT in 2016–17

AAT OUTCOMES	NUMBER
<b>By decision</b>	
Decision affirmed	8
Decision varied/set aside/remitted	7
<b>Other</b>	
Dismissed by AAT	1
No jurisdiction	0
Extension of time refused	0
<b>By consent or withdrawn</b>	
Decision affirmed	0
Decision varied/set aside/remitted	4
Dismissed by consent	1
Dismissed by operation of law	0
Withdrawn by applicant	13
<b>Total</b>	<b>34</b>

# Impact of FOI on agency resources

To assess the impact on agency resources on compliance with the FOI Act, agencies are required to estimate the hours that staff spent on FOI matters and the non-labour costs directly attributable to FOI, such as training and legal costs.

**Table D.16:** Comparative total yearly cost of FOI processing

YEAR	TOTAL COST \$	YEAR	TOTAL COST \$	YEAR	TOTAL COST \$
1982–83*	7,502,355	1994–95	11,955,482	2006–07	24,936,178
1983–84	15,106,511	1995–96	14,564,562	2007–08	29,474,653
1984–85	16,496,961	1996–97	15,972,950	2008–09	30,358,484
1985–86	15,711,889	1997–98	12,191,478	2009–10	27,484,129
1986–87	13,336,864	1998–99	13,066,029	2010–11	36,318,030
1987–88	11,506,931	1999–00	14,035,394	2011–12	41,718,803
1988–89	10,494,376	2000–01	14,415,406	2012–13	45,231,147
1989–90	10,373,321	2001–02	17,387,088	2013–14	41,836,685
1990–91	9,921,772	2002–03	18,398,181	2014–15	40,021,572
1991–92	12,723,097	2003–04	20,189,136	2015–16	41,151,698
1992–93	12,702,329	2004–05	22,860,022	2016–17	44,787,154
1993–94	13,977,360	2005–06	24,903,771		

Table D.17: Average cost per FOI request for last ten years

YEAR	REQUESTS DETERMINED	TOTAL COST	AVERAGE COST PER REQUEST DETERMINED \$
2007–08	31,367	29,474,653	940
2008–09	25,139	30,358,484	1,208
2009–10	19,583	27,484,129	1,403
2010–11	20,187	36,318,030	1,799
2011–12	22,237	41,718,803	1,876
2012–13	21,764	45,231,147	2,078
2013–14	23,106	41,836,685	1,811
2014–15	29,000	40,021,572	1,380
2015–16	33,173	41,151,698	1,241
2016–17	34,029 (2.6% increase)	44,787,154 (8.8% increase)	1,316 (6% increase)

Table D.18: Reported time spent by staff on FOI matters for years 2013–14 to 2016–17 and % change between 2015–16 and 2016–17

PERCENTAGE OF TIME SPENT	2013–14	2014–15	2015–16	2016–17	+/- %
Staff numbers: 75–100% of time spent on FOI matters	287	291	259	276	6.56
Staff numbers: Less than 75% of time spent on FOI matters	3,623	3,046	3,378	3,600	6.57
Total staff hours	630,936	589,726	614,424	670,986	9.21
Total staff years	315.5	294.9	307.2	335.5	-



**Table D.19:** Estimated staff costs of FOI processing for 2016–17

TYPE OF STAFF	STAFF YEARS	TOTAL STAFF COSTS \$[*]
FOI officers	258.63	30,808,955
SES	9.23	2,727,886
APS Level 6 and EL 1–2	26.82	4,669,263
APS Levels 1–5	38.45	3,784,513
Minister and advisers	1.10	238,518
Minister's support staff	1.25	122,827
<b>Total</b>	<b>335.49</b>	<b>42,351,963</b>

[\*] Includes 60% loading for related costs.

## Non-labour costs

**Table D.20:** Non-labour costs for FOI processing for years 2013–14 to 2016–17, and the percentage change between 2015–16 and 2016–17.

COSTS \$	2013–14	2014–15	2015–16	2016–17	%+/-
General legal advice	830,002	1,031,544	483,263	1,268,462	162.48
Litigation	157,781	764,772	930,047	635,240	-31.70
Total legal costs	987,783	1,796,316	1,413,310	1,903,702	34.70
General administrative	706,032	378,265	309,987	237,932	-23.24
Training	134,989	334,599	341,303	244,765	-28.29
Other	78,352	114,453	273,007	48,792	-82.00
<b>Total</b>	<b>1,907,156</b>	<b>2,623,633</b>	<b>2,337,607</b>	<b>2,435,191</b>	<b>4.17</b>

# Impact of the Information Publication Scheme on agency resources

Agencies are required to provide information about the costs of meeting their obligations under the Information Publication Scheme (IPS), which commenced on 1 May 2011.

## Information Publication Scheme costs

**Table D.21:** Reported time spent by staff on IPS matters for years 2013–14 to 2016–17, and the percentage change between 2015–16 and 2016–17

PERCENTAGE OF TIME SPENT	2013–14	2014–15	2015–16	2016–17	%+/-
Staff numbers: 75–100% of time spent on IPS	17	5	8	9	12.5
Staff numbers: Less than 75% of time spent on IPS	415	240	212	280	32.08
Total staff hours	26,116	10,696	7,083	6,705	- 5.34
Total staff years	13.1	5.3	3.5	3.35	-

**Table D.22:** Estimated staff costs of IPS for 2016–17

TYPE OF STAFF	STAFF YEARS	TOTAL STAFF COSTS \$[*]
IPS officers	2.70	321,390
SES	0.06	16,986
APS Level 6 and EL 1–2	0.36	63,102
APS Levels 1–5	0.23	23,079
<b>Total</b>	<b>3.35</b>	<b>424,557</b>

[\*] Includes 60% loading for related costs.

# Appendix E: Acronyms and abbreviations

ACRONYM OR ABBREVIATION	EXPANDED TERM
AAT	Administrative Appeals Tribunal
ACAPS	Australian Community Attitudes to Privacy Survey
ACCAN	Australian Communications Consumer Action Network
AHPRA	Australian Health Practitioner Regulation Agency
AHRC	Australian Human Rights Commission
AIC Act	<i>Australian Information Commission Act 2010</i>
ALRC	Australian Law Reform Commission
ANAO	Australian National Audit Office
APEC	Asia-Pacific Economic Cooperation
APP	Australian Privacy Principle
APPA	Asia Pacific Privacy Authorities
APS	Australian Public Service
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
BGA	Block Grant Authority
CALC	Consumer Action Law Centre
CASA	Civil Aviation Safety Authority
CCLCSA	Consumer Credit Law Centre South Australia
CII	Commissioner-Initiated Investigation
CIO	Credit and Investments Ombudsman
CHF	Consumers Health Forum of Australia
CPN	Consumer Privacy Network
DBN	Data Breach Notification

ACRONYM OR ABBREVIATION	EXPANDED TERM
DHS	Department of Human Services
DIBP	Department of Immigration and Border Protection
DSS	Department of Social Services
DVS	Document Verification Service
EDR	External dispute resolution
EFA	Electronic Frontiers Australia Inc.
ESD	Ecologically Sustainable Development
EWOQ	Energy + Water Ombudsman Queensland
EWON	Energy & Water Ombudsman NSW
EWOSA	Energy & Water Ombudsman SA
EWOV	Energy and Water Ombudsman Victoria
EWOWA	Energy and Water Ombudsman Western Australia
FOS	Financial Ombudsman Service
FOI	Freedom of information
FTE	Full-Time Equivalent
GDPR	General Data Protection Regulation
GP	General practice
GPEN	Global Privacy Enforcement Network
GST	Goods and Services Tax
HI	Healthcare Identifiers
IC	Information Commissioner
Information Commissioner	Australian Information Commissioner, within the meaning of the <i>Australian Information Commissioner Act 2010</i> .
IPP	Information Privacy Principle
IPS	Information Publication Scheme
MDBA	Murray-Darling Basin Authority

ACRONYM OR ABBREVIATION	EXPANDED TERM
MOU	Memorandum of Understanding
MYEFO	Mid-Year Economic and Fiscal Outlook
My Health Records Act	<i>My Health Records Act 2012</i>
NAB	National Australia Bank
NDB	Notifiable Data Breaches
NPP	National Privacy Principle
OAIC	Office of the Australian Information Commissioner
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PPN	Privacy Professionals' Network
Privacy Act	<i>Privacy Act 1988</i>
PAW	Privacy Awareness Week
PIA	Privacy Impact Assessment
PTO	Public Transport Ombudsman Victoria
SES	Senior Executive Service
SI	Student Identifier
SME	Small and Medium Enterprises
SRC Act	<i>Safety, Rehabilitation and Compensation Act 1988</i>
TAP	Talking about performance
Telecommunications Act	<i>Telecommunications Act 1997</i>
TCO	Tolling Customer Ombudsman
TFN	Tax File Number
TIA Act	<i>Telecommunications (Interception and Access) Act 1979</i>
TIO	Telecommunications Industry Ombudsman
TPPs	Territory Privacy Principles
WHS	Workplace Health and Safety

## Appendix F: Correction of material errors

Correction of errors in the *Office of the Australian Information Commissioner Annual Report 2015–16*.

### Page 3

The OAIC incorrectly referenced ‘Subsection 63(1) of the *Public Service Act 1999*’ in the transmittal letter. The correct reference is section 46 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act)

### Page 12

The first paragraph referenced the 2015–16 Budget; the correct reference was the 2016–17 Budget.

### Page 14

The number of privacy complaints about credit reporting bodies was incorrectly reported as 153 rather than 151 and telecommunications reported as 151 rather than 153 (however the figures shown on page 42 relating to this subject are correct).

### Page 16

The rise in FOI enquiries was incorrectly reported as 19% rather than 31%.

The number of Information Commissioner reviews of FOI requests was incorrectly reported as 323 rather than 373 (for 2014–15).

## Appendix G: Index

### A

Access Canberra, 74

accountability and management, 99–111

acronyms and abbreviations, 183–5

Administrative Appeals Tribunal (AAT), 177–8

    vexatious applicant declarations, 90, 91

Advanced Passenger Processing (AdPP) data, 73

advertising and market research, 110

advice on privacy related topics, 47, 76–8

agencies, *see* government agencies

agency resource statement, 153–4

agreement, Information Commissioner reviews by, 86

airport border clearance processes, 73–4

*Annual Report 2015–16* correction of material errors, 186

Ashley Madison, 71

Asia-Pacific Economic Cooperation (APEC), 29

Asia Pacific Privacy Authorities (APPA), 16, 29, 31

assessments, *see* privacy assessments

Assistant Commissioners, 24, 26, 100, 101, 104, 106

Audit Committee, 101

Australia Post, 93

Australian Bureau of Statistics, 155

Australian Capital Territory (ACT) Government, 74, 156

Australian Community Attitudes to Privacy Survey (ACAPS), 15, 32

    industry debrief event, 82

Australian Digital Health Agency, 44, 155–6

Australian Government, *see* government agencies

Australian Health Practitioner Regulation Agency, 80

Australian Human Rights Commission (AHRC), 107, 156

Australian Information Access Commissioners, 29, 92

Australian Information Commissioner, *see* Commissioner

*Australian Information Commissioner Act 2010* (AIC Act), 23, 24, 100

Australian Law Reform Commission, 78

Australian National Audit Office (Auditor-General), 101, 108

Australian Privacy Principles (APPs), 56

- assessments, 72, 73–4, 160–1; digital health, 79–80, 161
- codes, 49
- complaints issues, 61, 158
- determinations made by Commissioner, 67
- phone enquiries about, 58

Australian Public Service (APS) Privacy Governance Code, 49, 96–7, 101

Australian Security and Investments Commission, 93

Australian Transaction Reports and Analysis Centre, 93

awareness and understanding about FOI rights, 51, 92

awareness and understanding about privacy, 47–8, 81–3

- complaints handling function, 40, 66
- information services, 46
- Notifiable Data Breaches (NDB) scheme, 68
- voluntary data breach notification scheme, 44

## B

Block Grant Authority (BGA), 87

broadcast media interviews, 31

Business improvement team, 104

business/professional associations, 62

## C

Canada, 71

Cancer Screening Register, 77

'certain operations of agencies' exemption, 95

Comcare, 74, 93

Commissioner, 23–4, 25, 100

- determinations made under Privacy Act, 67
- remuneration, 106
- review by, 14–17

Commissioner-initiated investigations (CIIs), 45, 70–1



*see also* Information Commissioner reviews

Common Thread Network, 29

Commonwealth Disability Strategy, 110–11

Commonwealth Ombudsman, 88, 93

communication and collaboration, 27–34

*see also* awareness and understanding; publications

complaints, 53, 88, 92

*see also* privacy complaints

compliance with Privacy Act, 41–2

conciliation, resolution of privacy complaints by, 40, 63, 159

case studies, 64–5

consultants, 108

Consultation Forum, 106

Consumer Privacy Network (CPN), 16, 27–8, 48

contracts, 108–9

corporate governance, 100–1

corporate services, 156

costs, *see* finance

*Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, 73–4

credit reporting bodies, 18, 61, 62, 64

determinations, 67

Credit Reporting Code, 81

culturally and linguistically diverse (CALD) communities, 16, 48, 52

staff members, 106

## D

*Data breach notification* webpage, 44

data breach notifications, 20, 30, 43–4, 68–9, 80

data-matching, 75–6

Data Retention Scheme, 78

Department of Education and Training, 74, 87

MOU, 156

Department of Employment, 91

Department of Health, 77, 93

Department of Human Services (DHS), 44, 75, 80, 93

MOU, 157

Department of Immigration and Border Protection (DIBP), 73–4, 88, 93

MOU, 157

Department of the Prime Minister and Cabinet, 49, 93

Department of Veterans' Affairs, 93

Deputy Commissioner, 24, 26, 100, 104

determinations, 45, 67

digital health, 79–80, 155–6, 161

data breach notifications, 20, 69, 80; timeliness, 44

direct marketing, 78

disability reporting, 110–11

disclosure log, 173

Dispute Resolution branch, 24, 40

Diversity Committee, 106

*Do Not Call Register Act 2006*, 78

Document Verification Service (DVS), 72

'documents of an agency', 87

## E

educational materials, see publications

elder abuse inquiry, 78

eLearning course, 79, 82

employees, see staff

eNewsletters, 28

enforceable undertakings and determinations, 45, 71

Enhanced Welfare Payment Integrity, 75

enquiries

Freedom of Information, 21, 85; timeliness, 50

privacy, 57–9; timeliness, 46

Enterprise Agreement, 106

environment (ecologically sustainable development), 111

environment (operational), 22

eSafety Commissioner, 82

Ethnic Communities' Councils of Australia, 48

European Union (EU) General Data Protection Regulation (GDPR), 30, 78

events, 30–1, 40, 46, 51, 92

Privacy Awareness Week, 31, 82

targeting CALD communities, 48

Executive, 100

exempt contracts, 108

exemptions in FOI decisions, 95, 167–8

extensions of time FOI notifications and requests, 89–90

External Dispute Resolution schemes, 28, 61

external networks, 29–30

## F

Facebook page likes, 34

female staff, 103

finance, 108–10, 114–48, 153–4

agency FOI costs, 95, 179–81; charges, 170–2

agency Information Publication Scheme costs, 182

amounts paid and received under MOUs, 155–7

remuneration, 106

finance sector, 18, 62, 64

voluntary data breach notifications, 69

Foreign Fighters Act, 73–4

fraud control, 110

Freedom of Information (information access rights), 16–17, 21, 84–95, 162–82

networks, 29, 30

OAIC, 111

performance statement, 50–3

Freedom of Information complaints, 53, 88, 92

Freedom of Information decisions, review of, 173–8

vexatious applicant declarations, 90, 91

*see also* Information Commissioner reviews

Freedom of Information disclosure log, 173

Freedom of Information enquiries, 21, 85

timeliness, 50

full-time equivalent staff, 102

full-time staff, 103

**G**

Gateway Service Providers, 72

gender of staff, 103

Glen Lazarus Team, 71

Global Privacy Enforcement Network, 29

goals, 11

government agencies (Australian Government) and privacy, 47

- assessments, 73–4
- complaints, 18, 62
- data-matching, 75–6
- personal information management, 54–5

government agencies FOI costs, 95, 179–81

- charges, 170–2

government agencies Information Publication Scheme costs, 182

grant programs, 110

'Growing up digital' event, 82

guidance materials, see publications

*Guidelines on Data-matching in Australian Government Administration*, 76

**H**

health service providers, 78

- privacy complaints, 18, 62, 65
- privacy enquiries, 57
- see also digital health

healthcare identifiers (HI), 79, 80

'How do I make a privacy complaint' webpage, 40

human resources, see staff

**I**

identity verification assessment, 72

iiNet, 72

Immigration Assessment Authority, 93

in person enquiries, 21, 57

Indigenous staff, 106

information access rights, see Freedom of Information

Information Commissioner reviews (IC reviews), 16, 21, 85–8, 174–6  
    timeliness, 50  
Information Contact Officer Network (ICON), 28  
Information Publication Scheme, 111, 182  
Inspector-General of Intelligence and Security, 101  
insurance sector, 62, 63  
internal agency review of FOI decisions, 173  
international airport border clearance processes, 73–4  
International Conference of Data Protection and Privacy Commissioners, 29  
The International Conference of Information Commissioners, 30  
International Right to Know Day, 92

## L

law enforcement and public safety exemption, 95  
learning and development, see staff learning and development  
legislative instruments, 49, 80–1  
Linkedin followers, 34  
loyalty programs, 72

## M

male staff, 103  
management and accountability, 99–111  
mandatory breach notifications, 30, 68, 101  
    digital health data, 20, 69, 80; timeliness, 44  
Mandatory Data Breach Notification Bill, 30  
Maritime Union of Australia, 71  
Masterson, Tristan, 87  
media and media coverage, 33, 82–3  
    Freedom of Information, 51, 92  
    Privacy Awareness Week, 31, 82  
    privacy complaints handling function, 46  
    privacy information services, 46  
media enquiries, 33  
Medicare, 80  
membership lists, 71

memoranda of understanding, 74, 155–7

men staff, 103

mentoring program, 105

Minister, 100

mobile apps, 15

Murray-Darling Basin Authority, 87

*My Health Records Act 2012*, 78, 79, 80

MyHealth Record System Operator, 79, 80, 155–6

## N

National Action Plan for the Open Government Partnership, 17

National Australia Bank, 69

National Cancer Screening Register, 77

National Disability Strategy, 111

networks, 27–30

non-English speaking backgrounds, people from, see culturally and linguistically diverse (CALD) communities

non-salary benefits, 105

Northern Australian Infrastructure Facility, 93

Notifiable Data Breaches (NDB) Scheme, 30, 68, 101

## O

objectives, 11

*O/ACnet* eNewsletters, 28

Ombudsman, 88, 93

online privacy, 32, 71

- complaints, 62
- 'Growing up digital' event, 30

Open Government Forum, 17

operational environment, 22

Optus, 72

organisation and structure, 9–11, 22–6, 104

- FOI complaints handling function, 88

## P

parliamentary committees, 77

part-time staff, 103

passenger data, 73–4

performance, 37–97

Performance Management and Development Scheme, 104

performance pay, 106

performance statement, 38–55

personal (in person) enquiries, 21, 57

personal information, FOI requests for, 93, 94, 169

personal information management capabilities, 54–5, 96–7

personal privacy exemption, 95

phone enquiries, 21, 57, 58–9

portfolio membership, 100

practical refusal of FOI requests, 168

privacy, 14–16, 18–20, 27–32, 56–83, 158–61

- performance statement, 39–49, 54–5
- personal information management capabilities, 54–5, 96–7

*Privacy Amendment (Notifiable Data Breaches) Act 2017*, 68

privacy assessments, 41–2, 71–4, 160–1

- digital health, 79–80, 161

Privacy Authorities Australia, 29

Privacy Awareness Week, 31, 82

*Privacy business resource*, 78

*Privacy (Credit Reporting) Code 2014*, 81

privacy complaints, 18–20, 59–67, 158–9

- early resolution scheme, 16, 64
- External Dispute Resolution schemes, 28, 61
- performance statement, 39–40

privacy enquiries, 57–9

- timeliness, 46

*Privacy fact sheets*, 78

Privacy Governance Code, 49, 96–7, 101

privacy impact assessment eLearning course, 79, 82

privacy information services, 46

Privacy Professionals' Network (PPN), 27

ENewsletters distributed to, 28

events, 30

*Privacy (Tax File Number) Rule 2015*, 74

procurement, 108–9

professional/business associations, 62

*Public Governance, Performance and Accountability Act 2013*, 38, 100, 108

public information service, 46

Public Interest Determinations, 49

publications (guidance and education materials), 42, 45, 47, 78–9

ENewsletters, 28

FOI Act guidelines, 92

Information Commissioner decisions, 50

Notifiable Data Breaches (NDB) scheme guidance, 68

translations, 48, 52

purpose, 10

## Q

quality of privacy complaint resolution, 39

Queensland University of Technology, 30

## R

Regional Processing Centres, 73

remuneration, 106

resources, *see* publications

retail sector, 18, 62

review of FOI decisions, 173–8

*see also* Information Commissioner reviews

risk management, 101

privacy assessment approach, 41

role, 9



## S

*Safety, Rehabilitation and Compensation Act 1988*, 74

Sea Shepherd Australia, 88

sectors

assessments, 72–4

complaints about, 18, 61, 62–3, 64–5

voluntary data breach notifications, 20

Senate Community Affairs Legislation Committee, 77

Senior Executive Service (SES) officers, 106

small business, 109

SmartGates, 73, 74

social media, 34

complaints handling function coverage, 46

Freedom of Information mentions, 51

Privacy Awareness Week mentions, 82

privacy information services, 46

privacy survey findings, 32

*Spam Act 2003*, 78

speaking engagements, 82

staff, 102–7

staff costs of FOI processing, 181

staff costs of IPS, 182

staff learning and development, 39, 53, 104–5

conciliation training, 40

staff time spent on FOI matters, 180

staff time spent on IPS matters, 182

stakeholders, 11

start-up businesses, 78

statutory data-matching, 75

statutory office holder, see Commission

*Student Identifiers Act 2014*, 74

submissions drafted, 47, 77–8

Sydney Gay and Lesbian Mardi Gras, 30

**T**

tax file numbers, 64, 74, 75

telecommunications

assessments, 72

complaints, 18, 62

*Telecommunications Act 1977*, records of disclosure under, 72

*Telecommunications (Interception and Access) Act 1979*, personal information disclosed under, 72

telephone enquiries, 21, 57, 58–9

Telstra, 72

tenders and contracts, 108–9

Territory Privacy Principles, 74

third party, personal information sent to, 69, 80

time spent by staff on FOI matters, 180

timeliness in FOI matters, 89–90, 169

complaints, 53

Information Commissioner reviews, 50

timeliness in privacy matters

assessments, 41

Commissioner-initiated investigations, 43

complaints, 39, 63

mandatory digital health data breach notifications, 44

voluntary data breach notifications, 43

written enquiries, 46

Trade Marks Office, 93

Twitter followers, 34, 82

**U**

undertakings, enforceable, 45, 71

United Kingdom, 69

Universal Student Identifier, 74

utilities sector, 62

**V**

values, 11

vexatious applicant declarations, 90–1

vision, 11

Vodafone, 72

voluntary data breach notification scheme, 20, 68–9

awareness, 44

timeliness, 43

**W**

website, 83

*Data breach notification page*, 44

*'How do I make a privacy complaint'* page, 40

welfare payments, 75

women staff, 103

work health and safety, 107

workers' compensation claimant information, 74

workplace diversity, 106

workplace relations, 106

written enquiries, 21, 57

timeliness, 46, 51

**Y**

young people, 16

# Appendix H: Requirements

PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PART OF REPORT
<b>17AD(g) Letter of transmittal</b>			
17AI	A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with section 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	3
<b>17AD(h) Aids to access</b>			
17AJ(a)	Table of contents.	Mandatory	4
17AJ(b)	Alphabetical index.	Mandatory	187
17AJ(c)	Glossary of abbreviations and acronyms.	Mandatory	183
17AJ(d)	List of requirements.	Mandatory	200
17AJ(e)	Details of contact officer.	Mandatory	2
17AJ(f)	Entity’s website address.	Mandatory	2
17AJ(g)	Electronic address of report.	Mandatory	2
<b>17AD(a) Review by accountable authority</b>			
17AD(a)	A review by the accountable authority of the entity.	Mandatory	14–17
<b>17AD(b) Overview of the entity</b>			
17AE(1)(a)(i)	A description of the role and functions of the entity.	Mandatory	9
17AE(1)(a)(ii)	A description of the organisational structure of the entity.	Mandatory	23–26
17AE(1)(a)(iii)	A description of the outcomes and programmes administered by the entity.	Mandatory	38–83

PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PART OF REPORT
17AE(1)(a)(iv)	A description of the purposes of the entity as included in corporate plan.	Mandatory	10
17AE(1)(b)	An outline of the structure of the portfolio of the entity.	Portfolio departments - mandatory	9, 23–26
17AE(2)	Where the outcomes and programs administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change.	If applicable, Mandatory	N/A

#### **17AD(c) Report on the Performance of the entity**

##### ***Annual performance Statements***

17AD(c)(i); 16F	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule.	Mandatory	38–83
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##### ***17AD(c)(ii) Report on Financial Performance***

17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory	112–149
17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	153–154
17AF(2)	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	If applicable, Mandatory.	112–149, 153–154

#### **17AD(d) Management and Accountability**

##### ***Corporate Governance***

PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PART OF REPORT
17AG(2)(a)	Information on compliance with section 10 (fraud systems)	Mandatory	110
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	3
17AG(2)(b)(ii)	A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place.	Mandatory	3
17AG(2)(b)(iii)	A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity.	Mandatory	3
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	100
17AG(2)(d) — (e)	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to non-compliance with Finance law and action taken to remedy non-compliance.	If applicable, Mandatory	N/A
<b>External Scrutiny</b>			
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	N/A
17AG(3)(a)	Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity.	If applicable, Mandatory	N/A
17AG(3)(b)	Information on any reports on operations of the entity by the Auditor-General (other than report under section 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, Mandatory	N/A

PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PART OF REPORT
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, Mandatory	N/A
<b>Management of Human Resources</b>			
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	102
17AG(4)(b)	Statistics on the entity's APS employees on an ongoing and non-ongoing basis; including the following: <ul style="list-style-type: none"> <li>▪ Statistics on staffing classification level;</li> <li>▪ Statistics on full-time employees;</li> <li>▪ Statistics on part-time employees;</li> <li>▪ Statistics on gender;</li> <li>▪ Statistics on staff location;</li> <li>▪ Statistics on employees who identify as Indigenous.</li> </ul>	Mandatory	103
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the <i>Public Service Act 1999</i> .	Mandatory	106
17AG(4)(c)(i)	Information on the number of SES and non-SES employees covered by agreements etc identified in paragraph 17AG(4)(c).	Mandatory	103
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	103
17AG(4)(c)(iii)	A description of non-salary benefits provided to employees.	Mandatory	105
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	If applicable, Mandatory	106
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, Mandatory	N/A
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, Mandatory	N/A

PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PART OF REPORT
17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, Mandatory	N/A
<b>Assets Management</b>			
17AG(5)	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities.	If applicable, mandatory	N/A
<b>Purchasing</b>			
17AG(6)	An assessment of entity performance against the Commonwealth Procurement Rules.	Mandatory	108
<b>Consultants</b>			
17AG(7)(a)	A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	108
17AG(7)(b)	A statement that “During [reporting period], [specified number] new consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]”.	Mandatory	108
17AG(7)(c)	A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged.	Mandatory	108
17AG(7)(d)	A statement that “Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.”	Mandatory	108



PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PART OF REPORT
<b>Australian National Audit Office Access Clauses</b>			
17AG(8)	If an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor's premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, Mandatory	N/A
<b>Exempt contracts</b>			
17AG(9)	If an entity entered into a contract or there is a standing offer with a value greater than \$10 000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	If applicable, Mandatory	N/A
<b>Small business</b>			
17AG(10)(a)	A statement that "[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance's website."	Mandatory	109
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	109
17AG(10)(c)	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that "[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury's website."	If applicable, Mandatory	109

PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PART OF REPORT
<b>Financial Statements</b>			
17AD(e)	Inclusion of the annual financial statements in accordance with subsection 43(4) of the Act.	Mandatory	112–149
<b>17AD(f) Other Mandatory Information</b>			
17AH(1)(a)(i)	If the entity conducted advertising campaigns, a statement that “During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity’s website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance’s website.”	If applicable, Mandatory	110
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, Mandatory	N/A
17AH(1)(b)	A statement that “Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity’s website].”	If applicable, Mandatory	110
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	110
17AH(1)(d)	Website reference to where the entity’s Information Publication Scheme statement pursuant to Part II of FOI Act can be found.	Mandatory	110
17AH(1)(e)	Correction of material errors in previous annual report	If applicable, mandatory	186
17AH(2)	Information required by other legislation	Mandatory	158–161, 162–182

## Our priorities for the coming year

In collaboration with the Department of the Prime Minister and Cabinet, and the Australian Public Service Commissioner, we will implement the Australian Public Service (APS) Privacy Governance Code, which will play a key role in building public trust in the APS, supporting the Australian Government's public data agenda and enhancing privacy governance and capability.

The Notifiable Data Breaches scheme will be take effect in February 2018, strengthening the protections afforded to Australians' personal information, and improving transparency in the way that organisations respond to serious data breaches. The OAIC will work with businesses and agencies to ensure that guidance and resources are available to promote a smooth implementation of this important new privacy protection.

We will review the Privacy (Credit Reporting) Code 2014 and provide recommendations for improvement, in consultation with industry and stakeholder groups.

Throughout the year, we will continue to conduct targeted privacy assessments in areas such as national security, identity management, digital health, and the enhanced welfare payment integrity data matching program.

We will host the 47th Asia Pacific Privacy Authorities meeting and Data + Privacy Asia Pacific national conference — providing a unique opportunity for Australian privacy professionals to engage with industry developments on an international level.

We will celebrate the 30th anniversary of the commencement of the Privacy Act 1988.

We will update tools and guidance for Australian Government agencies to assist them to review their compliance with the FOI Act.

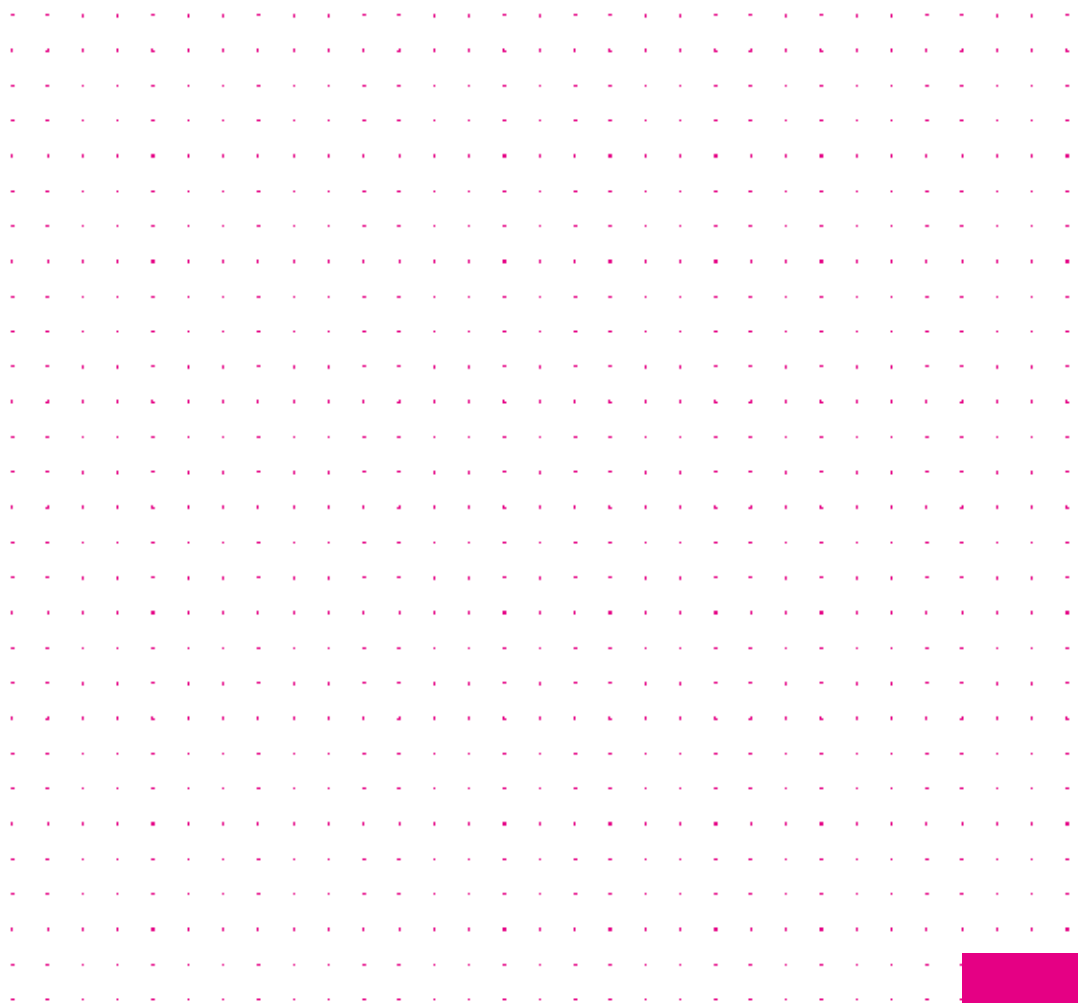
We will develop and publish an FOI regulatory action policy that outlines how we undertake IC reviews, FOI complaints and Commissioner-initiated investigations.

We will conduct a campaign for Right to Know Day 2017 raising awareness about people's right to access government information and promoting FOI as essential to both democracy and good governance.

We will provide advice and guidance in support of any implementation of the Australian Government's Productivity Commission's Data Availability and Use report, and the Cyber Security Strategy among other priorities.

We are at the forefront of guidance and enforcement of Australia’s privacy and freedom of information laws; shaping how emerging technologies and data practices impact the lives of every Australian.

In 2016–17 we have continued to promote and protect two important principles of open democratic government in the information age — the right of individuals to access government-held information and understand how it is used for public purposes; and to exercise choice and control over their personal information.



[oaic.gov.au](http://oaic.gov.au)

Office of the Australian Information Commissioner

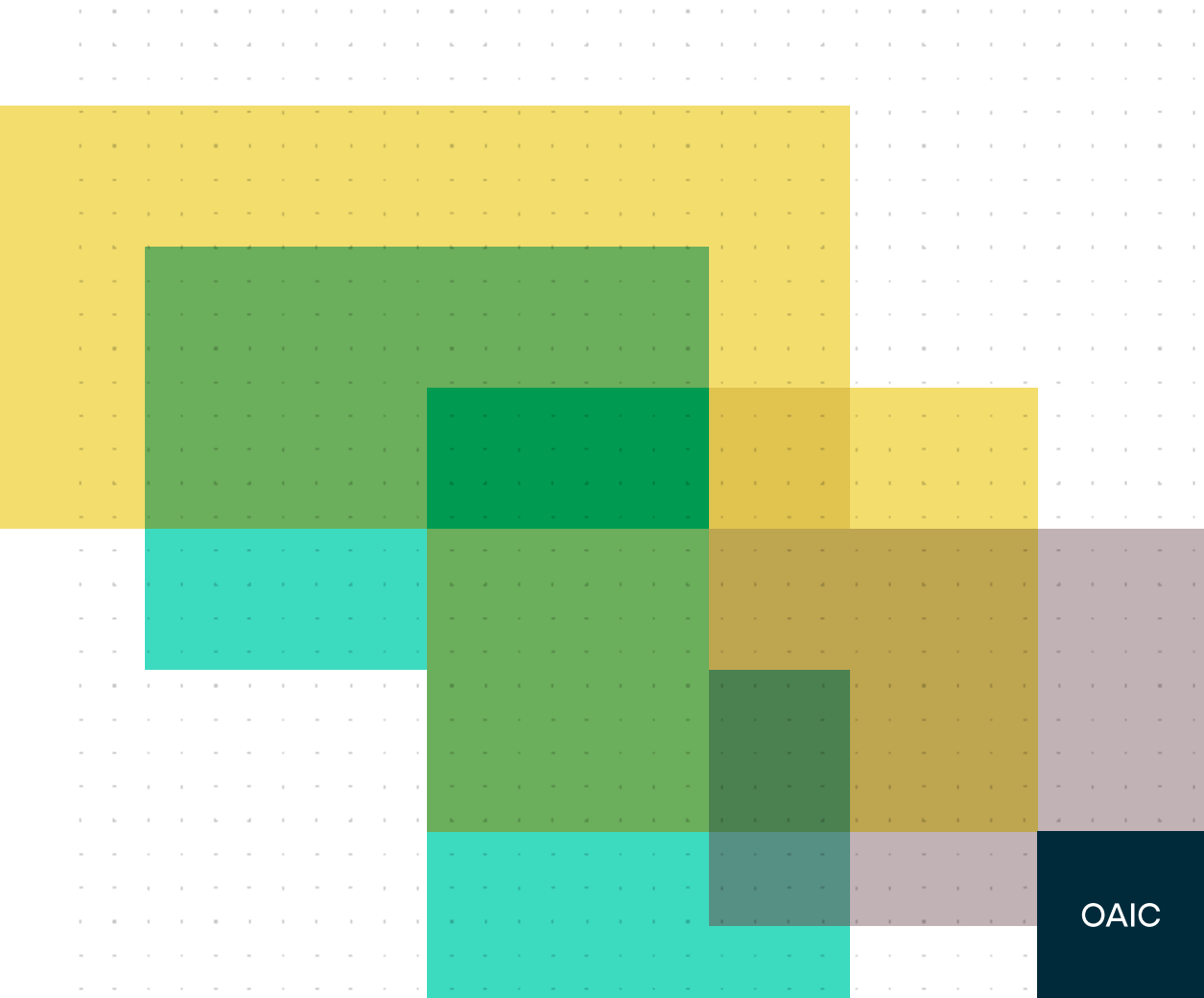
1300 363 992  
[enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
[@OAICgov](https://twitter.com/OAICgov)



**Australian Government**  
**Office of the Australian  
Information Commissioner**

Office of the Australian  
Information Commissioner

Annual Report 2017–18



ISSN 1839-5155

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### **Contact**

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

Website: [www.oaic.gov.au](http://www.oaic.gov.au)

Phone: 1300 363 992

Mail: Director, Strategic Communications  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

Our annual report is also available free of charge on our website at  
[www.oaic.gov.au/annualreport2017-18](http://www.oaic.gov.au/annualreport2017-18)

### **Non-English speakers**

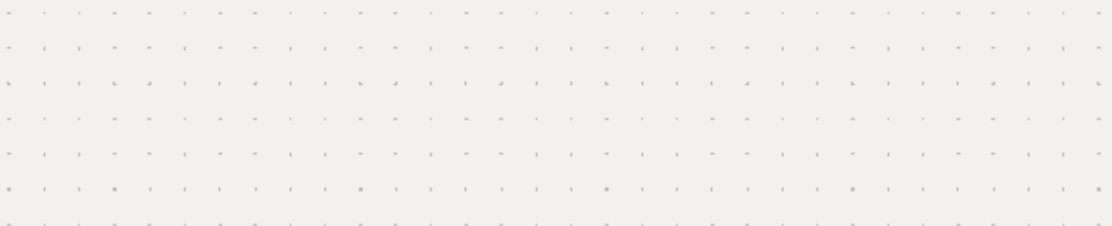
If you speak a language other than English and need help, please call the translating and interpreting service on 131 450 and ask for the Office of the Australian Information Commissioner on 1300 363 992.

### **Accessible formats**

All our publications can be made available in a range of accessible formats. If you would like this report in an accessible format, please contact us.

### **Design**

L+L Design







Australian Government

Office of the Australian Information Commissioner

**The Hon Christian Porter MP**

Attorney-General  
Parliament House  
Canberra ACT 2600

Dear Attorney,

I am delighted to provide to you, for presentation to the Parliament, the Office of the Australian Information Commissioner's (OAIC's) Annual Report 2017–18 for the year ending 30 June 2018.

This report has been prepared for the purposes of section 46 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which requires that I prepare and provide an annual report to you for presentation to the Parliament.

Section 30 of the *Australian Information Commissioner Act 2010* (AIC Act) requires the Information Commissioner to prepare an annual report — under aforementioned section 46 of the PGPA Act — on the OAIC's operations, including a report on freedom of information matters (defined in section 31 of the AIC Act) and privacy matters (defined in section 32 of the AIC Act).

The freedom of information matters include a summary of the data collected from Australian Government ministers and agencies in relation to activities under the *Freedom of Information Act 1982*.

I certify that the OAIC has prepared a fraud risk assessment and fraud control plan. We also have a number of appropriate fraud prevention, detection, investigation, reporting and data collection mechanisms in place. The OAIC has taken all reasonable measures to minimise the incidence of fraud.

I certify that this report has been prepared in accordance with the *Public Governance, Performance and Accountability Amendments (Non-corporate Commonwealth Entity Annual reporting) Rule 2016*.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'A. Falk'.

**Angelene Falk**

Australian Information Commissioner  
Australian Privacy Commissioner

17 September 2018

## Contents

<b>Part 1 — Overview</b>	<b>05</b>
About the OAIC	06
Purpose	07
Commissioner's review	08
Our year at a glance	12
Our structure	16
Communication and collaboration	18
<b>Part 2 — Performance</b>	<b>25</b>
Our performance statement	26
Overall performance	27
Privacy	47
Privacy assessments	64
Freedom of Information (FOI)	76
FOI Awareness	86
<b>Part 3 — Management and accountability</b>	<b>91</b>
Corporate governance	92
External scrutiny	94
Human resources	95
Procurement	99
Other requirements	100

**Part 4 — Financial statements ..... 103**

**Part 5 — Appendices ..... 141**

Appendix A: Agency resource statement and resources for outcomes ..... 142

Appendix B: Memoranda of understanding ..... 145

Appendix C: Privacy statistics ..... 148

Appendix D: FOI statistics ..... 152

Appendix E: Acronyms and abbreviations ..... 190

Appendix F: Correction of material errors ..... 193

Appendix G: Index ..... 194

Appendix H ..... 201

# 1

Part 1  
Overview

About the OAIC	06
Purpose	07
Commissioner’s review	08
Our year at a glance	12
Our structure	16
Communication and collaboration	18

## About the OAIC

The Office of the Australian Information Commissioner (OAIC) is an independent statutory agency within the Attorney-General's portfolio, established under the *Australian Information Commissioner Act 2010* (AIC Act).

Our key role is to meet the needs of the Australian community when it comes to the regulation of privacy and freedom of information. We do this by:

- Ensuring proper handling of personal information in accordance with the *Privacy Act 1988* (Privacy Act) and other legislation.
- Protecting the public's right of access to documents under the *Freedom of Information Act 1982* (FOI Act).
- Performing strategic functions relating to information management within the Australian Government, in accordance with the AIC Act.

The OAIC is headed by the Australian Information Commissioner, a statutory officer appointed by the Governor-General under the AIC Act. The Commissioner has a range of powers and responsibilities outlined in the AIC Act, and exercises powers under the FOI Act, the Privacy Act and other legislation.

Timothy Pilgrim, PSM, was the Australian Information Commissioner and the Privacy Commissioner during the term of this annual report until his retirement on 23 March 2018. Angelene Falk was appointed as acting Australian Information Commissioner and acting Privacy Commissioner on 24 March 2018 and was appointed by the Governor-General as Australian Information Commissioner and Privacy Commissioner on 16 August 2018.

## Purpose

Our Purpose is to promote and uphold privacy and information access rights.

**In the 2017–18 Corporate Plan we determined we would be successful if we:**

- ✓ Assist businesses and Australian Government agencies to understand their privacy obligations and respect and protect the personal information that they handle.
- ✓ Efficiently and effectively take action against suspected interferences with privacy to improve compliance with the *Privacy Act 1988*.
- ✓ Assist the community to understand and feel confident to exercise their privacy and information access rights.
- ✓ Assist Australian Government agencies to understand their FOI obligations and respect and promote access to government information.
- ✓ Efficiently and effectively carry out our regulatory functions under the *Freedom of Information Act 1982*.



**Commissioner’s review**

This has been a year of great achievement,  
continuity and change for the OAIC.





On 23 March 2018 we said farewell to Timothy Pilgrim, who retired from the positions of Australian Information Commissioner and Privacy Commissioner after contributing so much to the privacy, FOI and information management landscape and who skilfully navigated the OAIC through considerable change. The achievements in this report reflect Timothy's dedication and vision. Over more than 20 years Timothy upheld and promoted the values of privacy protection and access to government held information through his work.

I took over the roles as acting Australian Information Commissioner and acting Privacy Commissioner from 24 March 2018 and was appointed as Australian Information Commissioner and Privacy Commissioner on 16 August 2018 for a three year term.

My acting appointment coincided with a time of heightened community awareness of privacy, both domestic and global. Domestic and global regulatory developments are requiring greater transparency and accountability of personal information handling, and the community is increasingly expecting business and government to meet that challenge.

The European Union General Data Protection Regulation (GDPR) came into effect in May 2018, impacting Australian organisations that operate in the European market. Like Australia's Notifiable Data Breaches (NDB) scheme and the Australian Government Agencies Privacy Code, the requirements concentrate on enhancing the accountability and transparency of personal information handling practices.

Increased community awareness is reflected in the demand for the OAIC's services, with a general growth in work across the OAIC's regulatory activities in both privacy and information access. We have also continued to create efficiencies and increase our productivity, while implementing a significant new area of work with the NDB scheme commencing on 22 February 2018. This is a testament to the OAIC's ability to adapt and respond, and to the skill, commitment and dedication of staff. The NDB scheme requires all entities with obligations to secure personal information under the Privacy Act to notify individuals whose personal information is involved in a data breach that is likely to result in serious harm. Entities must also notify the OAIC.

The NDB scheme is a key transparency measure, reinforcing organisations' accountability for personal information security. In the period to 30 June 2018 we received 305 data breach notifications under the NDB scheme and 174 voluntary notifications. By comparison, in the 2016–17 financial year, the OAIC received 114 voluntary data breach notifications.

We have established a framework to receive and respond to NDB notifications. We are releasing quarterly reports, which provide statistical information on notifiable data breaches occurring in Australia and the reasons why they happen. Understanding causes will help everyone to take steps to mitigate against occurrences in the future. We will also continually enhance our processes and build on the guidance we provide to organisations and agencies.

In 2017–18 the OAIC received 2,947 privacy complaints, an 18% increase on last year, and we closed 2,766, an 11% increase on privacy complaints closed compared to last financial year. We received 801 requests for Information Commissioner (IC) review under the *Freedom of Information Act 1982* (FOI Act), a 27% increase on last year, and closed 610, an increase of 18% on 2016–17. Our team has handled 19,407 privacy enquiries and 1,931 freedom of information (FOI) enquiries, either in writing, by phone or in person. This represents an overall increase of 13% when compared to last financial year.

We continued to implement efficiencies in our regulatory activities to address these increases, and to work effectively within the resources available. The average time taken to close a privacy complaint was 3.7 months this year, compared to 4.7 months in 2016–17. Regarding FOI — notwithstanding the increase in the number of IC review applications received, we were able to finalise 84% within 12 months, exceeding our target of 80% completed within 12 months. The average time taken to close an IC review was 6.7 months, a slight increase on last year's average time of 6.2 months.

Our advisory, guidance and monitoring expertise is also highly sought after. We provided more advice across government and the economy than ever before. We have also worked proactively to help agencies to prepare for the commencement of the Australian Government Agencies Privacy Code on 1 July 2018, including by providing detailed guidance, training and resources to support agencies to take a privacy by design approach to handling personal information. The Code will help ensure a consistent standard of personal information governance in Australian Government agencies.

Over the past 12 months there have also been a number of significant new proposals from government that impact the data landscape and the regulatory role of the OAIC. We have engaged with the proposed Consumer Data Right, helping to ensure that the legislative framework, standards and processes are designed in a way that support privacy and data security, for the benefit of all individuals who wish to use the scheme. The Australian Competition and Consumer Commission's inquiry into digital platforms also raises issues of significant interest to the OAIC in regulating personal information handling in the online environment. We have also continued to engage with the Australian Government's proposal to mandate comprehensive credit reporting, to ensure respect for privacy and an efficient credit reporting system. Ahead of that proposed change, we reviewed and varied the *Privacy (Credit Reporting) Code 2014* (CR Code), a legislative instrument, which supports part IIIA of the Privacy Act which regulates the handling of consumer credit reporting information in Australia.

In relation to access to government held information, we have continued to assist Australian Government agencies to take a proactive approach to publishing the information that they hold. This year we conducted a survey of all agencies subject to the FOI Act, to review compliance with the Information Publication Scheme (IPS) set out in that Act. A report on this work will be published in 2018–19, complemented by updated guidance for agencies on providing administrative access outside of the FOI Act. We have also published an FOI regulatory action policy, which further outlines our approach to undertaking IC reviews, FOI complaints and Commissioner initiated FOI investigations.

And in work that traverses the OAIC’s information management, FOI and privacy functions, we continue to participate in the Open Government Forum, and our work on the development of Australia’s next Open Government National Action Plan will continue into 2018–19. We have also continued to engage with the Government’s response to the Productivity Commission’s Data Availability and Use report, to support the better use of government held information while protecting privacy.

The next 12 months will raise new challenges for privacy and access to information regulation. The OAIC continues to adapt and develop our capabilities in order to prevent, detect and remedy across a

changing regulatory landscape. Working with our stakeholders across the economy, government and with domestic and international regulators will be critical to our success.

Looking back over the past year and to the future, it is the staff of the OAIC who are committed to delivering solutions for the Australian community every working day who make a difference. Ultimately it is their achievements that are outlined in this report.



**Angelene Falk**  
Australian Information Commissioner and  
Privacy Commissioner  
20 August 2018

## Our year at a glance

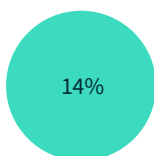
### Privacy highlights

↑ We received  
**18% more**  
privacy complaints

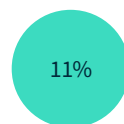
2017-18  
**2,947**  
Total

2016-17  
**2,495**  
Total

The majority of  
complaints came from  
the following sectors



Finance (including  
superannuation)



Health service  
providers



Australian  
Government



Telecommunications



Credit reporting  
bodies



Retail

↑ We finalised  
**11% more**  
privacy complaints

2017-18  
**2,766**  
Total

2016-17  
**2,485**  
Total



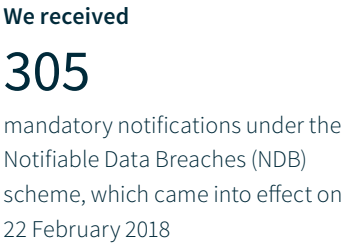
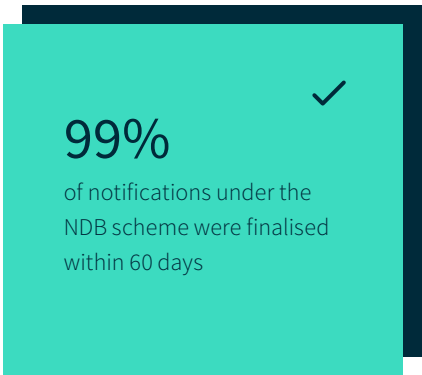
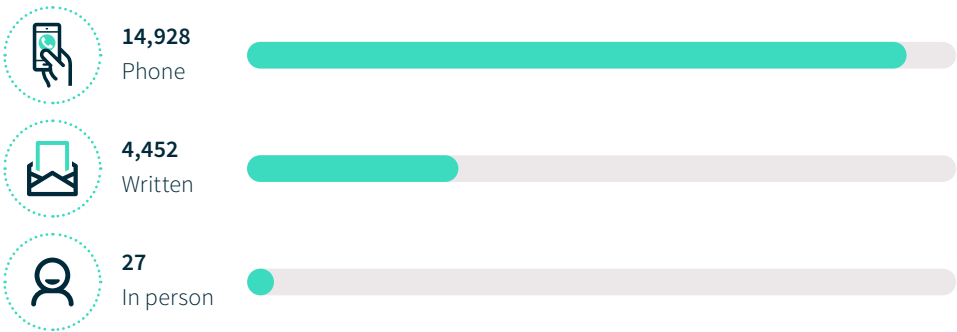
Average time taken to  
finalise a complaint was

**3.7 months**



Compared to the time  
taken last year of

**4.7 months**

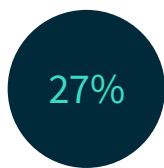


## FOI highlights

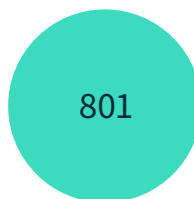
We received

**801**

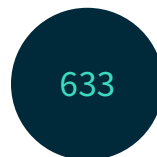
applications  
for Information  
Commissioner reviews  
of FOI requests



This is a 27%  
increase over 2016-17



2017-18



2016-17

**In 2016-17 we finalised 86% of applications**  
for an Information Commissioner review within 12 months of receipt

**The top five agencies involved in  
Information Commissioner reviews were:**



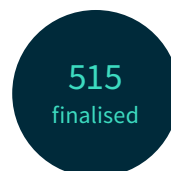
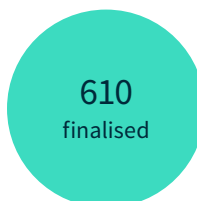
- 1 Department of Home Affairs (154)
- 2 Department of Human Services (119)
- 3 Australian Federal Police (54)
- 4 Department of Defence (39)
- 5 Australian Taxation Office (28)

We finalised

**18% more**

Information Commissioner  
reviews

2017-18



2016-17

2017-18

The average time taken to  
finalise an Information  
Commissioner review was

**6.7 months**



Compared to the time  
taken last year of

**6.2 months**

2016-17

We handled

1,931

FOI enquiries which is a 6% decrease on last year

6%



1,339  
Phone



584  
Written



8  
In person

We received

72% more

FOI complaints

62

2017-18

36

2016-17



Average time taken to  
finalise a complaint was

5.8 months

compared to 3 months  
in 2016-17



83%

of all FOI complaints  
were finalised within  
12 months of receipt  
compared to 100%  
in 2016-17

## Our structure

The OAIC is headed by the Australian Information Commissioner, a statutory officer appointed by the Governor-General. The Commissioner has a range of powers and responsibilities outlined in the AIC Act, and exercises powers under the FOI Act, the Privacy Act and other privacy related legislation.

The Australian Information Commissioner exercises all functions under the AIC Act including all the privacy and FOI functions.

The Australian Information Commissioner is the agency head responsible for the strategic oversight and accountability for the agency's regulatory, strategic, advisory and dispute resolution functions, as well as its financial and governance reporting.

Timothy Pilgrim was the Australian Information Commissioner and Australian Privacy Commissioner until his retirement on 23 March 2018. Angelene Falk was appointed as acting Australian Information Commissioner and acting Privacy Commissioner from 24 March 2018 and appointed by the Governor-General to the roles of Australian Information Commissioner and Privacy Commissioner on 16 August 2018.



## Angelene Falk

Angelene has held senior positions in the OAIC since 2012. This includes her role as Deputy Commissioner since 2016.

Over the past decade, Angelene has worked extensively with Australian Government agencies, across the private sector and internationally, at the forefront of addressing regulatory challenges and opportunities presented by rapidly evolving technology and potential uses of data. Her experience extends across industries and subject matter, including data breach prevention and management, data sharing, credit reporting, digital health and access to information.

Angelene holds a Bachelor of Laws with Honours and a Bachelor of Arts from Monash University and a Diploma in Intellectual Property Law from Melbourne University.

## Support to the Commissioner

The Commissioner is supported by an Executive team of three substantive SES positions, and staff who are experts in their field. The OAIC is structured into two main Branches — Dispute Resolution and Regulation and Strategy.

Generally, the Dispute Resolution Branch is responsible for case management and resolution of privacy complaints, FOI Information Commissioner reviews, Commissioner initiated privacy and FOI investigations and the public enquiries line. The Regulation and Strategy Branch provides guidance, examines and drafts submissions on proposed legislation, conducts assessments, and provides advice on inquiries and proposals that may have an impact on privacy.

## Communication and collaboration

This year we used a variety of different channels to raise awareness about privacy and freedom of information, and engaged with businesses, government agencies and the Australian public.

This section contains highlights of some of these activities, with other activities outlined in section 2.

### Our networks

The OAIC hosts and participates in a number of domestic and international privacy networks which provide opportunities for organisations and other regulators to meet, collaborate and share expertise.

#### Privacy Professionals' Network

The Privacy Professionals' Network (PPN) has continued to grow this year, from 1,235 to 3,442 members. The engagement from PPN members is high, with the majority of PPN events run in 2017–18 fully subscribed. Approximately 70% of PPN members are from the private sector, with the remainder from the public sector and not-for-profit organisations. Members have the opportunity to hear from experts, listen to case studies, and network with other members at PPN events.

#### Information Contact Officer Network

The Information Contact Officer Network (ICON) provides news, updates and information about FOI. ICON has continued to engage its members with monthly updates and events. In 2017–18 ICON grew from 458 members to 538. We held an ICON information session in Canberra in March 2018, which explored ongoing and emerging challenges in FOI administration and included an expert panel discussion.

## Consumer Privacy Network

The Consumer Privacy Network (CPN) helps the OAIC to further understand and respond to current privacy issues affecting consumers. Members are appointed for a two year period. Current members are:

- Australian Communications Consumer Action Network.
- Australian Privacy Foundation.
- Consumer Action Law Centre (CALC).
- Consumer Credit Law Centre SA (CCLCSA).
- Consumers Health Forum of Australia.
- Electronic Frontiers Australia Inc.
- Financial Rights Legal Centre Inc (NSW).
- Internet Australia.
- Legal Aid NSW.
- Legal Aid Queensland.
- The Foundation of Young Australians.
- National LGBTI Health Alliance.
- Federation of Communities' Councils of Australia.
- National Mental Health Consumer and Carer Forum.

## External networks

### Privacy Authorities Australia

Privacy Authorities Australia is a group of Australian privacy authorities that meets regularly to promote best practice and consistency of privacy policies and laws. Membership includes the OAIC and privacy representatives from other states and territories.

### Asia Pacific Privacy Authorities

This is the principal forum for privacy authorities in the Asia-Pacific region to form partnerships and exchange ideas about privacy regulation, new technologies and the management of privacy enquiries and complaints.

### Global Privacy Enforcement Network

The Global Privacy Enforcement Network (GPEN) is designed to facilitate cross-border cooperation in the enforcement of privacy laws. It builds on the Organisation for Economic Co-operation and Development's (OECD's) Recommendation on Privacy Law Enforcement Cooperation (2007), which recognised the need for greater cooperation between privacy enforcement authorities on cross-border privacy matters.

### **International Conference of Data Protection and Privacy Commissioners**

The largest and longest standing network for data protection and privacy authorities, the International Conference of Data Protection and Privacy Commissioners brings together organisations from around the world to provide leadership at international level in data protection and privacy.

### **Asia-Pacific Economic Cooperation**

The Asia-Pacific Economic Cooperation (APEC) administers a number of working groups including a working group focused on privacy, data transfers and digital interactions. We do not officially participate in any of APEC's working groups, however, we monitor them regularly and assess the impacts on our operating landscape. We also regularly review opportunities to co-sponsor APEC projects and research. We have also adopted and are participants in the APEC Cross-border Privacy Enforcement Arrangement (CPEA).

### **Common Thread Network**

This network brings together data protection and privacy authorities from Commonwealth countries.

### **Association of Information and Access Commissioners**

This Australian/New Zealand network is for information access authorities who administer FOI legislation.

### **The International Conference of Information Commissioners**

The international conference provides an opportunity for commissioners, practitioners and advocates to exchange ideas for the advancement of access to information.

## **Events**

This year, OAIC Executive members delivered more than 50 speeches to audiences from the public, private, community, health and education sectors.

We held two Privacy Professionals' Network (PPN) events this year. Both events focused on educating businesses and agencies about the Notifiable Data Breaches (NDB) scheme and the European Union's General Data Protection Regulation (GDPR). The first event was held in Adelaide. Co-hosted with Deloitte, this was the first in-person engagement with Adelaide based PPN members and provided an opportunity for members to talk directly to the OAIC. In March, the OAIC travelled to Brisbane to discuss the first few weeks of operation of the Notifiable Data Breaches scheme at a PPN event co-hosted by the OAIC and Ashurst.

As part of our commitment to assisting Australian Government agencies move towards a best practice approach to privacy governance, we also held an Australian Government Agencies Privacy Code seminar in Canberra. This event provided an overview of the requirements of the Code, and highlighted the range of resources available to support agencies. It was open to Australian Government agency staff at all levels.

### 47th Asia Pacific Privacy Authorities Forum

In July 2017, we hosted the 47th Asia Pacific Privacy Authorities (APPA) Forum at the International Convention Centre in Sydney. More than 45 representatives from 17 APPA member authorities attended the meeting. Chaired by the Australian Information and Privacy Commissioner, APPA members and invited guests discussed interoperability and identifying global and domestic synergies for regulatory guidance and enforcement activities in the Asia Pacific.

Key topics discussed over the two day meeting included de-identification, the European Union's GDPR and data breach notifications. APPA members complimented the compelling agenda and content of the forum.

### Data + Privacy Asia Pacific Conference

Immediately following the APPA Forum, we held a conference entitled Data + Privacy Asia Pacific. The conference was held to provide the Australian business community with the opportunity to hear from the region's regulators and to broaden the conversation to incorporate data and privacy experts. There were 274 attendees. A highlight of the conference was the opening session on ethical data stewardship which brought together a rare panel of global expertise in data and ethics; Australia's Dr Simon Longstaff, Executive Director of The Ethics Centre, was joined by Facebook Deputy Chief Privacy Officer, Rob Sherman, and leading academic, Peter Cullen from the Information Accountability Foundation. Feedback from attendees was overwhelmingly positive; the average rating for the overall event experience was 4.25/5.

### Community outreach and engagement

We hosted a free public panel discussion at the University of Adelaide, which explored questions surrounding ethics, media and privacy, and a Queensland University of Technology debate which asked the question 'Is privacy still relevant in the modern age?'. The University of Technology Sydney co-hosted 'Privacy as a career' event was oversubscribed, with law and IT students keen to hear from privacy and cyber security professionals.

An additional focus for this year was a series of 'grass roots' community engagement events. For example we exhibited at the Sydney Disability Expo, where information regarding access to health information was popular.

### International

OAIC representatives spoke at the following international events:

- International Conference of Data Protection and Privacy Commissioners in Hong Kong.
- International Conference of Information Commissioners in Manchester, England.
- APPA 48 in Vancouver, Canada.
- APPA 49 in San Francisco, United States.
- GPEN workshop in Israel.

## Privacy Awareness Week 2018

Privacy Awareness Week (PAW) is an annual initiative of the Asia Pacific Privacy Authorities forum. It is held every year to promote and raise awareness of privacy issues and the importance of protecting personal information.

In 2018, PAW ran from 13 to 19 May, promoting the theme 'Privacy: from principles to practice'. The theme encouraged organisations to ensure that privacy protection is part of their everyday business. This message was supported by a digital campaign that directed businesses, agencies and consumers to useful resources and the PAW website.

Tied into the PAW activities was the recognition of 30 years of the Australian Privacy Act. Communications focused on highlighting the evolution of the Act, along with technology and culture, through comparison social icons and a '30 years of the Privacy Act' timeline.

Throughout PAW, an innovative program of events allowed us to engage with a variety of sectors and the community. These events included a sold out business breakfast, attended by 154 representatives from business and government, and a community engagement event, where more than 1,000 commuters were informed about the importance of knowing their credit

history. The week was supported by 360 'supPAWters', who signed up to promote the importance of good privacy practice to their consumers and internally.



### PAW snapshot

The success of PAW resulted in:



**'As we reflect on this 30th anniversary of the Australian Privacy Act, it's clear that the significant role privacy and data protection plays in businesses, government agencies, and for individuals, has rapidly evolved in just a few short decades. In 2018, privacy and data protection must be a central part of the way you do business.'**

Angelene Falk, then acting Australian Information Commissioner and acting Privacy Commissioner, in her opening speech for the Privacy Awareness Week 2018 Business Breakfast.

## Webinars

We hosted a webinar on 21 November 2017 to help agencies and business to prepare for the commencement of the NDB scheme. Around 1,170 people viewed or listened to the webinar live. This included registrants from 10 countries, as well as Australia. The webinar is available on our website and as at 30 June 2018 had been viewed more than 2,000 times.

Another webinar was held on 15 May 2018 to launch our new new interactive Privacy Management Plan tool for Australian Government Agencies. We had 206 registrations for this event. The webinar is available to view on our website.

## Media

This year has seen a significant increase in community and media attention around our work, privacy and FOI. Privacy is increasingly of interest to Australian consumers and communities, and several high profile privacy incidents have prompted Australians to reflect on how their information is handled.

In 2017–18 we continued to adopt a strategic and proactive approach to disseminating information and raising awareness, resulting in a strong media presence across a variety of channels.

Media enquiries increased by 24% (317 in 2017–18 compared to 255 in 2016–17). These have been from a mixture of mainstream, business and digital publications.

## Social media



**Twitter**

[#dataprivacy17](#) trended as high as number two during the Data + Privacy Asia Pacific conference in July 2017.

[#2018PAW](#) trended to number one on the launch of Privacy Awareness Week 2018.



**Facebook**

Raised awareness of the Notifiable Data Breaches scheme with an estimated 428,000 Australians, through a paid Facebook consumer campaign.

# 2



Part 2  
Performance

Our performance statement	26
Overall performance	27
Privacy	47
Privacy assessments	64
Freedom of Information (FOI)	76
FOI Awareness	86

## Our performance statement

### Introduction

I, Angelene Falk, as the accountable authority of the Office of the Australian Information Commissioner, present the 2017–18 annual performance statements of the Office of the Australian Information Commissioner, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act). In my opinion, these annual performance statements are based on properly maintained records, accurately reflect the performance of the entity, and comply with subsection 39(2) of the PGPA Act.

## Overall performance

In 2017–18 we were working to achieve 35 Performance Measures as outlined in the OAIC Corporate Plan 2017–18. We met the target for 27 of these Performance Measures, five we did not achieve and three were not relevant in this reporting cycle. We:

- Promoted and upheld privacy rights — by achieving 21 of 25 Performance Measures.
- Promoted and upheld information access rights — by achieving nine of 10 Performance Measures.

We achieved all of our key deliverables for the year:

### Promote and uphold privacy rights

- Developed and implemented the Australian Public Service Privacy Governance Code and supporting training and resources.
- Prepared for the implementation of the Notifiable Data Breaches scheme in February 2018.
- Hosted the Asia Pacific Privacy Authorities meeting and the Data + Privacy Asia Pacific national conference.
- Trialled an early resolution process to assist with more efficient processing of privacy complaints.
- Conducted targeted privacy assessments in areas such as national security, identity management, digital health and the Enhanced Welfare Payment Integrity data-matching program.
- Celebrated the 30th anniversary of the commencement of the *Privacy Act 1988*.
- Reviewed the *Privacy (Credit Reporting) Code 2014*.

### Promote and uphold information access rights

- Updated tools and guidance for Australian Government agencies to assist them to review their compliance with the FOI Act.
- Developed and published an FOI regulatory action policy that outlines how we exercise our powers in relation to IC reviews, FOI complaints and Commissioner initiated FOI investigations.
- Conducted a campaign for Right to Know Day 2017.

## Results

Our performance is measured against Activities as outlined in the Corporate Plan 2017–18. Performance Measures marked with an asterisk were also performance targets in the OAIC's 2017–18 Portfolio Budget Statement.

## Privacy Performance Measures

**Response to Corporate Plan Activity 1.1** — Develop the privacy management capabilities of businesses and Australian Government agencies and promote privacy best practice

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.1.1</b> The OAIC applies a risk-based, proportionate approach to facilitate compliance with privacy obligations and promote privacy best practice	Yes	<ul style="list-style-type: none"> <li>▪ We regularly engage with business and Australian Government agencies, including through the provision of advice and guidance on how to comply with the Privacy Act and deliver privacy best practice.</li> <li>▪ In the past year we have developed two suites of resources to assist entities in implementing their new obligations under the Notifiable Data Breaches scheme, and the <i>Privacy (Australian Government Agencies — Governance) APP Code 2017</i>.</li> <li>▪ We also released other guides on key privacy issues, such as the in-depth Guide to Data Analytics which assists entities to achieve a high standard of privacy protection in line with increasing community expectations, while maximising the value of data held.</li> </ul>
<b>1.1.2</b> Guidance and educational materials are amended to incorporate learnings from regulatory activities such as assessments and investigations	Yes	<ul style="list-style-type: none"> <li>▪ We regularly update our guidance and education materials to ensure currency and relevance.</li> <li>▪ For example, in the past year we updated our guidance on de-identification to ensure relevance on this high-profile topic and to incorporate learnings from a range of regulatory activities.</li> </ul>

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.1.3</b> Regular dialogue and consultation with businesses and Australian Government agencies is undertaken	Yes	<ul style="list-style-type: none"> <li>We engage regularly with businesses and Australian Government agencies, including through the provision of advice on a wide range of matters such as the Australian Government’s Public Data Agenda, the new Consumer Data Right scheme, changes to the My Health Record system, review and variations of the <i>Privacy (Credit Reporting) Code 2014</i>, and the proposed introduction of mandatory comprehensive credit reporting.</li> </ul>
<b>1.1.4</b> The number of participating partners for Privacy Awareness Week is increased	No	<ul style="list-style-type: none"> <li>This year there were 360 participating partners for Privacy Awareness Week, just below our target of 370.</li> </ul>

**Response to Corporate Plan Activity 1.2 — Manage data breach notifications**

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.2.1</b> 80% of data breach notifications finalised within 60 days*	Yes	In meeting this target we: <ul style="list-style-type: none"> <li>Finalised 99% of notifications under the Notifiable Data Breaches (NDB) scheme, in operation from 22 February 2018, within 60 days.</li> <li>Finalised 97% of voluntary data breach notifications (DBNs) within 60 days.</li> <li>Closed 33% more voluntary DBNs than in 2016–17.</li> <li>Managed this alongside a 53% increase in voluntary DBNs received compared to 2016–17.</li> <li>Finalised voluntary DBNs within an average of 22.9 days, compared to 29.2 days in 2016–17.</li> </ul>

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.2.2</b>  80% of My Health Records data breach notifications finalised within 60 days*	Yes	In meeting this target: <ul style="list-style-type: none"> <li>▪ We finalised 100% of My Health Records data breach notifications received in 2017–18 within 60 days.</li> </ul>
<b>1.2.3</b>  Guidance and support tools for the Notifiable Data Breaches scheme are published	Yes	In meeting this target, we: <ul style="list-style-type: none"> <li>▪ Published 'Data breach preparation and response — A guide to managing data breaches in accordance with the <i>Privacy Act 1988</i> (Cth)'. This resource includes best practice advice on creating a data breach response plan and responding to a data breach, as well as specific information on compliance with the NDB scheme.</li> <li>▪ Published resources for individuals who have received a data breach notification, with the aim of providing information about complaint rights and the steps individuals can take to reduce the chances of experiencing harm as a result of a data breach.</li> <li>▪ Recorded and published an interactive webinar on the requirements of the NDB scheme, with case studies and frequently asked questions.</li> </ul>
<b>1.2.4</b>  Statistics on data breach notifications are published to inform the community about the operation of the data breach notification scheme	Yes	In meeting this target: <ul style="list-style-type: none"> <li>▪ We published the first quarterly report on the operation of the NDB scheme. This report included key statistics on the number of notifications received, the reported sources of data breaches, the top five sectors reporting data breaches under the scheme and the kinds of personal information affected.</li> </ul>

**Response to Corporate Plan Activity 1.3 — Conduct Commissioner initiated investigations**

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.3.1</b>  80% of CII's finalised within 8 months*	No	<ul style="list-style-type: none"> <li>▪ This target was not met, with 72.2% of privacy Commissioner initiated investigations (CII's) finalised within 8 months.</li> <li>▪ This reflects the complexity of the privacy CII's finalised during 2017–18, which includes investigations into Australian Red Cross Blood Service, Precedent Communications Pty Ltd, and the Department of Health.</li> <li>▪ In these matters, the desire for a timely outcome was balanced against the need to comprehensively consider the matters investigated, in line with community expectations and the public interest.</li> <li>▪ The OAIC continues to improve efficiencies in how privacy CII's are progressed to ensure timely outcomes.</li> </ul>
<b>1.3.2</b>  CII's result in improvements in the privacy practices of investigated entities	Yes	<ul style="list-style-type: none"> <li>▪ The OAIC achieved this measure by accepting enforceable undertakings from three respondents in 2017–18 (Australian Red Cross Blood Service, Precedent Communications Pty Ltd, and the Department of Health).</li> <li>▪ These enforceable undertakings set out steps that the respondent agreed to take to address concerns raised by the OAIC in its CII.</li> <li>▪ Implementation of these steps by the respondents led to changes in practices relating to improvement in privacy policies and procedures within those entities.</li> </ul>
<b>1.3.3</b>  CII outcomes and lessons learnt are publicly communicated	Yes	The OAIC achieved this measure by: <ul style="list-style-type: none"> <li>▪ Publishing privacy CII reports with our findings in relation to the Australian Red Cross Blood Service, Precedent Communications Pty Ltd investigations and the Department of Health investigation.</li> <li>▪ Publishing the enforceable undertakings accepted from the Australian Red Cross Blood Service, Precedent Communications and the Department of Health.</li> <li>▪ Publishing media releases on the OAIC's website about the conclusion of these investigations and lessons learnt.</li> <li>▪ Communicating the outcomes of these CII's in speeches and presentations by OAIC Executive and staff.</li> </ul>

### Response to Corporate Plan Activity 1.4 — Resolve privacy complaints

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.4.1</b>  80% of privacy complaints finalised within 12 months*	Yes	<p>In meeting this target, we:</p> <ul style="list-style-type: none"> <li>Finalised 97% of all privacy complaints within 12 months of receipt.</li> <li>Closed 11% more privacy complaints than in 2016–17.</li> <li>Reduced the average time to close a privacy complaint to 3.7 months.</li> <li>Managed this alongside an 18% increase in the number of privacy complaints received in 2017–18.</li> <li>Used our early resolution pilot to contribute to the efficient processing of privacy complaints.</li> </ul> <p>We ensured the quality of our privacy complaint handling process by:</p> <ul style="list-style-type: none"> <li>Handling privacy complaints in line with our Privacy regulatory action policy and Guide to privacy regulatory action.</li> <li>Undertaking regular staff training including: providing training with assistance from external trainers on decision writing, statutory investigation and conciliation, managing unreasonable complainant conduct, plain English language training and leadership training. Several staff also undertook Resolution Institute mediation training, and a number were accredited as mediators under the NMAS (National Mediator Accreditation Standards).</li> <li>Enabling staff to participate in complaint handling networks and events, including the Complaint Handlers Information Sharing and Liaison seminars, the International Association of Privacy Professionals Australia New Zealand (iappANZ) conference and Privacy Awareness Week activities.</li> <li>Meeting regularly with staff to discuss matters of significance across the teams and to ensure consistency of decision making.</li> </ul> <p>The ‘Resolving complaints’ section from page 55 provides case studies that demonstrate the quality of our complaint resolution, and information about the initiatives we put in place in 2017–18 to ensure the continued timeliness of our complaints resolution.</p>



Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.4.2</b>  Complaint handling service is promoted to the community	Yes	<p>In meeting this target, we:</p> <ul style="list-style-type: none"><li>▪ Undertook the Australian Community Attitudes to Privacy Survey in 2017, which helped us better understand the concerns of the community.</li><li>▪ Engaged with the community to promote our complaint handling service by:<ul style="list-style-type: none"><li>— Coordinating a consumer credit reporting education event with the Australian Retail Credit Association’s CreditSmart consumer education team in May 2018.</li><li>— Promoting OAIC services at the Sydney Disability Expo in May 2018.</li><li>— Promoted our complaint handling role in external speaking engagements.</li><li>— Recorded an increase of views of our ‘How do I make a privacy complaint?’ webpage by 22% compared to 2016–17, indicating an increased community awareness of our complaint handling service.</li></ul></li></ul>

**Response to Corporate Plan Activity 1.5 — Conduct privacy assessments**

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.5.1</b>  Assessments are completed in accordance with the schedule developed in consultation with the assessment target	No	<ul style="list-style-type: none"><li>▪ The information review and fieldwork stages of privacy assessments were generally completed in accordance with a schedule developed in consultation with the business or agency being assessed, however the finalisation of assessment reports was not completed on schedule in all cases.</li><li>▪ We will continue to improve our assessment reporting process in the next financial year and work with the business or agency being assessed to assist them to finalise responses to draft assessment reports.</li></ul>

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.5.2</b>  Monitoring and compliance approaches are coordinated with the business and operational needs of the assessment targets	Yes	<ul style="list-style-type: none"> <li>▪ We undertook professional, independent and systematic assessments in line with our Privacy regulatory action policy and our Guide to privacy regulatory action.</li> <li>▪ We engaged with and provided preliminary briefings to the business or agency being assessed prior to formally commencing an assessment. This is to clarify the OAIC's expectations, and to develop a schedule that recognises the operational needs of the business or agency being assessed.</li> <li>▪ An example of how we met this measure is our assessment of Trulioo, a Canadian organisation. We conducted the assessment via video conference across multiple days to accommodate the time difference.</li> </ul>
<b>1.5.3</b>  High proportion of recommendations accepted by assessment targets	Yes	<ul style="list-style-type: none"> <li>▪ 100% of recommendations were accepted by the business or agency being assessed.</li> <li>▪ The identification of privacy risks and resulting recommendations are proactively and openly communicated by the OAIC throughout assessments to promote discussion about how the business or agency being assessed can mitigate those risks.</li> </ul>
<b>1.5.4</b>  Key assessment outcomes and lessons learnt are publicly communicated where appropriate	Yes	<ul style="list-style-type: none"> <li>▪ We published privacy assessment reports on our website in full or with minimal redactions where appropriate.</li> <li>▪ We published summary reports to communicate the outcome of assessments that involve confidential material. For example, we published a summary report of our assessments of information disclosures to law enforcement agencies at Telstra, Optus, Vodafone and iiNet.</li> </ul>

Response to Corporate Plan Activity 1.6 — Provide a privacy public information service

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.6.1</b>  90% of written enquiries are finalised within 10 working days*	No	Target not met: <ul style="list-style-type: none"><li>74% of written privacy enquiries were finalised within 10 working days. Enquirers were notified of any delay at the time. This represents a decline in the 2016–17 response rate of 78% finalised within 10 working days. An increase in the complexity and volume of enquiries, as well as staff turnover affected our ability to meet this target in 2017–18. See the ‘Enquiries’ section on page 48 for more information.</li></ul>
<b>1.6.2</b>  New community, legal and other networks are identified for targeted promotion of the public information service	Yes	Target met: <ul style="list-style-type: none"><li>The OAIC promoted its information services for privacy related matters through outreach activities and community events, social media, in media statements and on our website.</li><li>In 2017–18, this included attending the Sydney Disability Expo, and holding a community stall during Privacy Awareness Week to promote individuals’ right to access their credit files and to answer questions about our services.</li><li>The OAIC also arranged staff training by the Federation of Ethnic Communities’ Council of Australia about how to better engage with culturally and linguistically diverse communities.</li><li>Privacy determinations, resources and updates were highlighted for privacy professionals and members of the public in our regular OAICnet and Privacy Professionals’ Network email newsletters.</li></ul>

**Response to Corporate Plan Activity 1.7 — Promote awareness and understanding of privacy rights in the community**

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.7.1</b>  Increase in media and social media mentions about privacy rights	Yes	<ul style="list-style-type: none"> <li>■ In 2017–18 there were 317 media mentions generated by media enquiries; an increase of 24% when compared to the 255 media mentions in 2016–17.</li> <li>■ There were 2,851 online media mentions and 4,400 social media mentions of privacy rights and the OAIC.</li> </ul>
<b>1.7.2</b>  Awareness and understanding about privacy rights and the role of the OAIC is improved	Yes	<ul style="list-style-type: none"> <li>■ The large number of media and social media mentions reported above demonstrates a strong awareness and understanding of privacy rights in the community.</li> <li>■ This is supported by external consumer research undertaken throughout the year. For example, the Consumer Policy Research Centre's 2018 Consumer data &amp; the digital economy report showed that 67% of Australians reported reading a privacy policy/terms and conditions for one or more services/products they signed up to in the past 12 months. This is compared to the finding in the OAIC's 2017 Australian Community Attitudes to Privacy Survey that 61% of people do not regularly read online privacy policies.</li> <li>■ The 18% increase in the number of privacy complaints and 16% increase in the number of privacy enquiries that we received in 2017–18 indicates a growing awareness of the role of the OAIC.</li> </ul>

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.7.3</b>  Increase in attendance numbers and positive feedback from public facing events	Yes	<ul style="list-style-type: none"> <li>■ In 2017–18, the OAIC focused on the July Data + Privacy Asia Pacific conference as our major public facing event. The conference had 274 attendees. The average rating for the quality of session content was 4.42/5, and the average rating for the overall event experience was 4.25/5.</li> <li>■ The OAIC's NDB scheme webinar on 21 November 2017 was viewed live by 1,170 people. This included registrants from 10 countries, as well as Australia. The webinar is available on our website and as at 30 June 2018 had been viewed more than 2,000 times.</li> <li>■ The OAIC's showcase public facing event during Privacy Awareness Week — the business breakfast — was attended by 154 attendees. Extra tickets were released after the event sold out early, with a substantial waitlist.</li> <li>■ The OAIC held a number of other small public facing events throughout 2017–18, including a Privacy as a Career event at the University of Technology Sydney, and a debate at the Queensland University of Technology.</li> </ul>
<b>1.7.4</b>  The OAIC's website is accessible for individuals and contains targeted content about privacy rights	Yes	<ul style="list-style-type: none"> <li>■ The OAIC's website contains a number of web accessibility improvements and we continually look for further ways that these can be enhanced.</li> <li>■ For example, in 2017–18 we introduced a 'mega-menu', which assists users to find content more easily. We also introduced ReadSpeaker, which is a naturalistic text-to-speech reader.</li> <li>■ In 2017–18 we commenced a project to redevelop our website. One of the aims of this project is to revise content for individuals, to make it easier to find and understand. The OAIC's new website will launch in 2018–19.</li> </ul>

Response to Corporate Plan Activity 1.8 — Develop legislative instruments

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.8.1</b>  Applications for Public Interest Determinations and Australian Privacy Principles codes are considered and responded to in a timely manner	Yes	<ul style="list-style-type: none"><li>▪ The OAIC did not receive any APP Code applications during the 2017–18 year. However, on 26 October 2017, the former Australian Information Commissioner developed and made the <i>Privacy (Australian Government Agencies — Governance) APP Code 2017</i> (the Australian Government Agencies Privacy Code, or the Code). This code development process was initiated by a request made from the Australian Information Commissioner to the Department of Prime Minister and Cabinet in May 2017. The Code was to commence on 1 July 2018 and applies to all Australian Government agencies subject to the <i>Privacy Act 1988</i> (except for ministers).</li><li>▪ On 6 March 2018, the OAIC received an urgent application for a privacy Public Interest Determination (PID) from the Department of Home Affairs, which would vary the terms of Public Interest Determination No. 2, which had been in operation since 1991 and permitted the disclosure of Australian citizenship status information. In response, on 13 March 2018, the former Information Commissioner made the Privacy (Australian Honours System) Temporary Public Interest Determination 2018. The Information Commissioner is currently considering the Department of Home Affairs’ application for a longer-term public interest determination.</li></ul>

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>1.8.2</b>  Legislative instruments are reviewed when necessary	Yes	<ul style="list-style-type: none"><li>▪ The OAIC administers the <i>Privacy (Credit Reporting) Code 2014</i> (CR Code), a legislative instrument, which regulates the handling of consumer credit reporting information in Australia. On 26 July 2017, following a tender process, the OAIC announced that it had contracted PricewaterhouseCoopers (PwC) to conduct an independent review of the operation of the CR Code. The independent review was required by paragraph 24.3 of the CR Code. The review sought feedback, through targeted and public consultation, on issues arising with regard to the interaction between the CR Code and the Privacy Act; significant issues or concerns about the practical operation of the CR Code and any requirements of the CR Code which had not been complied with in practice. PwC’s final report was published on 13 December 2017. The report made recommendations and gave feedback about a number of matters arising from the operation of the CR Code.</li><li>▪ On 29 May 2018, following an application by the code developer, the Australian Retail Credit Association, the then acting Australian Information Commissioner and acting Privacy Commissioner approved a variation of the CR Code under section 26T of the Privacy Act. The variations addressed recommendations and feedback in the PwC review. The varied CR Code was scheduled to commence on 1 July 2018.</li></ul>

## Freedom of information Performance Measures

**Response to Corporate Plan Activity 2.1** — Develop the FOI capabilities of Australian Government agencies and ministers, and promote FOI best practice

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>2.1.1</b>  Tools and guidance are updated to assist Australian Government agencies to comply with the Information Publication Scheme (IPS)	Yes	<ul style="list-style-type: none"> <li>In 2017–18 the OAIC conducted an IPS survey of all Australian Government agencies. The survey reviewed the operation of the IPS in agencies and also provided agencies with an opportunity to comply with the requirement to conduct a review under section 9 of the FOI Act.</li> </ul>
<b>2.1.2</b>  Guidance and resources are reviewed and updated to assist Australian Government agencies and ministers to apply the FOI Act	Yes	<ul style="list-style-type: none"> <li>The former Information Commissioner reissued Parts 3, 7, 10 and 11 of the Guidelines under section 93A of the FOI Act, which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act (FOI Guidelines).</li> <li>In June 2018, the then acting Information Commissioner also undertook public consultation on the revised Agency Resource 14 — Access to government information — administrative access.</li> </ul>



Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<p><b>2.1.3</b></p> <p>The majority of OAIC’s stakeholders receiving information are satisfied with the content and delivery</p>	Yes	<ul style="list-style-type: none"><li>▪ In 2017–18, the OAIC met with various government agencies to discuss issues affecting the FOI jurisdiction.</li><li>▪ The OAIC issues a monthly e-newsletter to Government FOI contact officers subscribed to the Information Contact Officer Network (ICON), which provides news, updates and information about FOI. The average click through rate for these monthly newsletters is 33.5%.</li><li>▪ The OAIC also issues a monthly e-newsletter to subscribers of OAICnet, which provides news and updates in relation to the OAIC, information about upcoming events, and recent privacy determinations and Information Commissioner review decisions.</li><li>▪ On 27 March 2018, the OAIC held an ICON information session and provided an update about the recent achievements and the priorities of the OAIC in the FOI jurisdiction. Agencies who attended the ICON information session provided positive feedback regarding the delivery and the content.</li></ul>

## Response to Corporate Plan Activity 2.2 — Conduct Information Commissioner (IC) reviews

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>2.2.1</b>  80% of IC reviews are completed within 12 months*	Yes	<ul style="list-style-type: none"> <li>▪ The OAIC completed 84.1% of IC reviews within 12 months.</li> <li>▪ We used alternative dispute resolution methods and early appraisal to clarify at an early stage the issues to be resolved or the information to be provided by either party in support of their claims or submissions. This included reviewing the material submitted by both parties and providing a preliminary view as to the merits of the case to the relevant party. The party then has the opportunity to make further submissions or take other action as may be appropriate (withdrawal of the IC review application or issuance of a section 55G revised decision).</li> <li>▪ We facilitated the early resolution of Information Commissioner Reviews by assisting the parties to reach an agreement about the outcome of the IC Review pursuant to section 55F of the FOI Act, including by arranging teleconferences between parties where appropriate.</li> <li>▪ We used our regulatory powers under the FOI Act to ensure efficient and timely processes. The Information Commissioner issued a 'Direction as to certain procedures to be followed in IC reviews' under section 55(2)(e)(i) of the FOI Act setting out the particular procedures that agencies and ministers must follow 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 (including when the OAIC will accept submissions in confidence).</li> <li>▪ We updated Part 10 of the FOI Guidelines, to which agencies must have regard in performing a function or exercising a power under the FOI Act, to reflect legislative amendments, developments and discussions in recent IC review decisions and Information Commissioner processes in carrying out IC review functions. Part 10 sets out in detail the process and underlying principles of IC review.</li> </ul>

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
		<ul style="list-style-type: none"><li>▪ There are 123 Commissioner-issued IC review decisions made under section 55K of the FOI Act published on AustLII. These decisions help agencies interpret the FOI Act and provide guidance on the exercise of their powers and functions by addressing novel issues as well as building on existing jurisprudence which shapes the FOI jurisdiction.</li><li>▪ We published an FOI regulatory action policy that outlines our approach to using our IC review powers. The policy should be read together with Part 10 of the FOI Guidelines.</li><li>▪ We reviewed and updated the SmartForm used by applicants to seek an IC review online.</li><li>▪ We developed staff capacity to identify matters that can be resolved quickly and informally through early resolution processes, whether it be through agreement or negotiation, case appraisals/preliminary views as well as identifying significant matters which should proceed to a Commissioner decision.</li></ul>

### Response to Corporate Plan Activity 2.3 — Investigate FOI complaints and conduct Commissioner initiated investigations

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>2.3.1</b>  80% of FOI complaints finalised within 12 months*	Yes	<ul style="list-style-type: none"> <li>83% of FOI complaints finalised during the year were completed within 12 months of receipt.</li> <li>We identified at an early stage whether a complaint is the appropriate mechanism where IC review is available.</li> <li>We used early appraisal to clarify at an early stage the issues to be resolved or the information to be provided by either party in support of their claims or submissions.</li> <li>We published an FOI Regulatory Action Policy, providing detailed information about our approach to the exercise of our FOI functions, including complaint handling. The policy should be read together with the FOI Guidelines.</li> <li>We updated Part 11 of the FOI Guidelines, to which agencies must have regard in performing a function or exercising a power under the FOI Act, to reflect the publication of the FOI Regulatory Action Policy. Part 11 sets out in detail the complaint handling process.</li> </ul>
<b>2.3.2</b>  80% of FOI related Commissioner initiated investigations finalised within 8 months*	N/A*	<ul style="list-style-type: none"> <li>No FOI related Commissioner initiated investigations began in 2017–18.</li> </ul>

\*A Measure that is considered Not Applicable for that reporting year, for whatever reason, is recorded towards achieving the Performance Measure.

**Response to Corporate Plan Activity 2.4 — Provide an FOI public information service**

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>2.4.1</b>  90% of FOI written enquiries are finalised within 10 working days*	No	Target not met: <ul style="list-style-type: none"> <li>88% of written enquiries were finalised within 10 working days. Enquirers were notified of any delay at the time.</li> <li>The response rate of 88% finalised within 10 working days was maintained from 2016–17. Staff turnover and increase in overall volume of enquiries affected our ability to meet this target in 2017–18.</li> </ul>
<b>2.4.2</b>  New community, legal and other networks are identified for targeted promotion of the public information service	Yes	<ul style="list-style-type: none"> <li>Staff from the OAIC’s FOI team promoted its public information service at the Sydney Disability Expo in May 2018.</li> <li>The OAIC held an Information Contact Officers Network (ICON) in March 2018.</li> <li>Members of the FOI team participated in FOI practitioner forums hosted by the Australian Government Solicitor throughout the year.</li> <li>The OAIC launched a ‘Right to Know’ day website in September 2017 which highlighted access to information and included a social media campaign and a video from the Information Commissioner on the theme ‘Why Freedom of Information matters to all Australians’.</li> <li>Information access issues, recent decisions and resource updates were highlighted for agency staff and members of the public in regular OAICnet and ICON email newsletters.</li> <li>Staff are working with other Information Commissioner offices to develop an optimal set of principles to inform FOI laws.</li> </ul>

**Response to Corporate Plan Activity 2.5 — Promote awareness and understanding of information access rights in the community**

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<b>2.5.1</b>  Increase in media and social media mentions about information access rights	Yes	<ul style="list-style-type: none"> <li>In 2017–18, there were 345 online media mentions and 428 social media mentions of information access rights and the OAIC.</li> </ul> <p>The work that we did to achieve these mentions included:</p> <ul style="list-style-type: none"> <li>Conducting a campaign for ‘Right to Know Day 2017’, which included launching a Right to Know website, with a video welcome from the then Information Commissioner on ‘Why Freedom of Information matters to all Australians’, as well as social media tips and posters.</li> <li>Using Twitter to highlight Information Awareness Month (May 2018).</li> <li>Participating in the Association of Information Access Commissioners (AIAC), which is an important way for the Australian Information Commissioner and staff to engage with other Information Commissioners. These meetings are held every six months and allow Information Commissioners to exchange ideas and experiences gained from the range of information access jurisdictions across Australia.</li> </ul>
<b>2.5.2</b>  The OAIC’s website is accessible for individuals and contains targeted content about information access rights	Yes	<ul style="list-style-type: none"> <li>The OAIC’s website contains a number of web accessibility improvements and we continually look for further ways that these can be enhanced.</li> <li>For example, in 2017–18 we introduced a ‘mega-menu’, which assists users to find content more easily. We also introduced ReadSpeaker, which is a naturalistic text-to-speech reader.</li> <li>In 2017–18 we commenced a project to redevelop our website. One of the aims of this project is to revise content for individuals, to make it easier to find and understand. The OAIC’s new website will launch in 2018–19. Throughout 2017–18 the OAIC has revised and updated its information access resources, including Fact Sheets and FAQs, to make them more accessible to all members of the community, including for culturally and linguistically diverse groups.</li> </ul>

## Privacy

The *Privacy Act 1988* (Privacy Act) requires Australian Government agencies and private sector organisations to follow a set of rules when collecting, using and storing individuals' personal information. Personal information is any information that is about an individual. The most obvious example is a name — other examples include address,

date of birth, photo of their face or even a record of their opinion and views. Any information that is about an identifiable individual is personal information.

Additional information regarding privacy statistics is included at Appendix C on page 148.

### Australian Privacy Principles

The Privacy Act includes 13 Australian Privacy Principles (APPs), which set out standards for business and government agencies managing personal information.

APP 1 — Open and transparent management of personal information

APP 2 — Anonymity and pseudonymity

APP 3 — Collection of solicited personal information

APP 4 — Dealing with unsolicited personal information

APP 5 — Notification of the collection of personal information

APP 6 — Use or disclosure of personal information

APP 7 — Direct marketing

APP 8 — Cross-border disclosure of personal information

APP 9 — Adoption, use or disclosure of government related identifiers

APP 10 — Quality of personal information

APP 11 — Security of personal information

APP 12 — Access to personal information

APP 13 — Correction of personal information

## Privacy enquiries

We provide information about privacy issues and privacy law to the public.

The OAIC experienced a 16% increase in privacy enquiries on the previous year. We answered 14,928 telephone calls related to privacy, and responded to 4,452 written privacy enquiries. We also assisted 27 in-person privacy enquiries.

The OAIC continues to see a broad range of enquiries from the community. Over half of all privacy phone enquiries received concerned the operation of the Australian Privacy Principles. The growth in enquiries indicates a continuation of the year-on-year trend of increased awareness about privacy issues, and a desire by individuals to exercise their rights.

The introduction of the Notifiable Data Breaches scheme has also contributed to an increase in enquiries received by the OAIC, and reflects the work the OAIC does in supporting entities to comply with their obligations.

As a part of our Memorandum of Understanding (MOU) with the ACT Government we continued to provide privacy services to ACT public sector agencies including handling privacy complaints in relation to the *Information Privacy Act 2014* and its Territory Privacy Principles (TPPs) and responding to enquiries from the public.

### Case study 1 — An individual's personal information is involved in a data breach

An enquirer received an email notifying them of a data breach from an organisation where they had applied for work, and contacted the OAIC for information about what they should do in response to the email.

We explained that under the Notifiable Data Breaches scheme, where an organisation has experienced a data breach involving personal information, the organisation needs to assess the potential impact and notify individuals of the data breach if there is a likely risk of serious harm to individuals. We referred the enquirer to guidance on our website on steps they could take to prevent identity fraud in the event of a data breach, as well as referring the individual to a security support service.

The enquiries officer also explained that organisations are required to take reasonable steps under Australian Privacy Principle 11 to ensure the security of personal information, and the steps the individual could take to lodge a privacy complaint.



**Case study 2 — A health service provider seeks information on clients' right to access information**

A psychologist contacted the OAIC about a request from a client for access to their personal information. The client had attended couple's counselling with their partner, and then individual sessions.

One of the individuals requested the psychologist provide access to all of the records for both their individual sessions, as well as the couple's sessions. The psychologist asked about the individual's right of access to these records.

We provided information on the application of APP 12 — Access to personal information, including APP 12.3(b), where providing access may have an unreasonable impact on the privacy of other individuals. We gave the enquirer information about a best privacy practice approach and referred them to the OAIC's APP Guidelines for more detailed guidance.

### Issues regarding privacy enquiries

In 2017–18 the most common privacy enquiries to our office were about the use and disclosure of someone's personal information (APP 6) followed by access (APP 12) and collection of personal information (APP 3).

**Table 1 — Phone enquiries about the APPs**

Issues	Number
APP 1 — Open and transparent management	48
APP 2 — Anonymity and pseudonymity	13
APP 3 — Collection	991
APP 4 — Unsolicited personal information	9
APP 5 — Notification of collection	637
APP 6 — Use or disclosure	1560
APP 7 — Direct marketing	159
APP 8 — Cross-border disclosure	60
APP 9 — Government identifiers	5
APP 10 — Quality of personal information	53
APP 11 — Security of personal information	882
APP 12 — Access to personal information	1351
APP 13 — Correction	145
APPs — Exemptions	975
APPs — Generally	980

We also received a number of questions related to other privacy issues, reflecting the broad range of matters the OAIC regulates.

The table below categorises these enquiries.

**Table 2 — Other phone enquiries regarding privacy**

Issues	Number of calls
Credit reporting	904
Data breach notification (voluntary)	229
Data-matching	1
Healthcare Identifier	1
My Health Records	9
Notifiable Data Breaches (NDB) scheme	513
National Privacy Principles	4
Privacy codes	30
Spent convictions	102
Tax file numbers	31
Territory Privacy Principles	23

## Privacy complaints

In 2017–18 the OAIC continued to provide an effective and efficient complaints service, investigating and resolving complaints by individuals about the possible mishandling of personal information under the Privacy Act and other relevant laws.

The OAIC handles complaints made about interferences with privacy under the APPs, any registered APP code, as well as matters relating to consumer credit reporting. We also resolve complaints about the handling of other information such as tax file numbers, spent convictions, data-matching and healthcare identification information.

In 2017–18 we received 2,947 privacy complaints. This is an 18% increase on the number of complaints we received last year, and follows on from a 17% increase in complaints in 2016–17, indicating a continuing awareness by individuals about

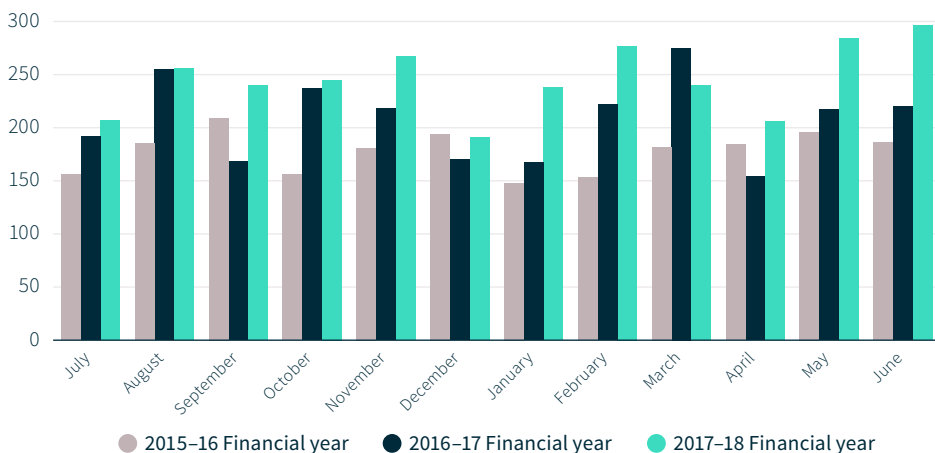
their privacy rights, and a willingness by individuals to take steps to protect their personal information.

The implementation of the Notifiable Data Breaches scheme on 22 February 2018, and the General Data Protection Regulation on 25 May 2018, have also shined a spotlight on personal privacy, leading to an increased engagement by individuals.

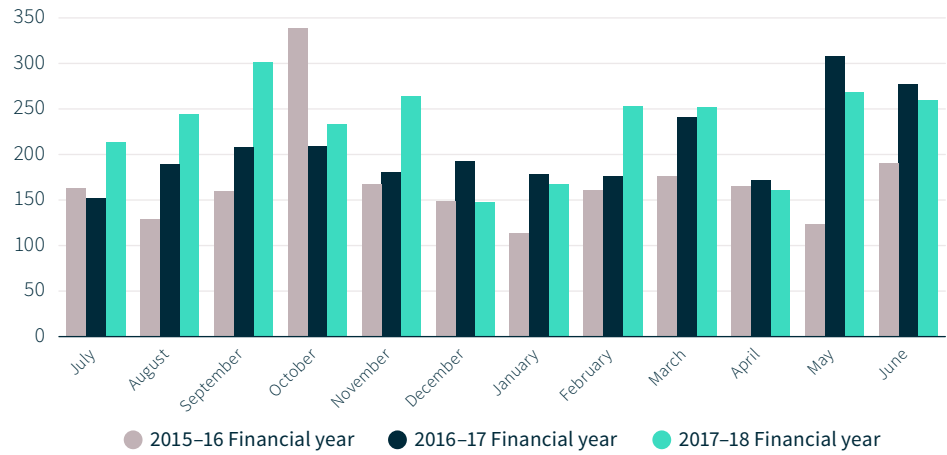
Alongside this increase in complaints, the OAIC finalised 2,766 complaints during the period. This is an 11% increase on the number of complaints we closed last year, and follows on from a 22% increase in finalisations in 2016–17.

As part of an MOU with the ACT Government, we continue to provide privacy services to ACT public sector agencies including handling privacy complaints in relation to the *Information Privacy Act 2014* and its 13 Territory Privacy Principles.

**Figure 1 — Complaints received per month — the past three years**



**Figure 2 — Complaints closed per month — the past three years**



**Issues regarding privacy complaints**

The majority of complaints we receive (70%) are about the handling of personal information under the APPs.

The most common issues raised in complaints about the APPs were:

1. APP 6 — Use or disclosure of personal information
2. APP 11 — Security of personal information
3. APP 12 — Access to personal information
4. APP 3 — Collection of personal information
5. APP 10 — Quality of personal information

In 2017-18, 14% of the complaints we received were about credit reporting (slightly down from 16% the previous year). This reflects the continuing role of external dispute resolution schemes in resolving complaints about credit reporting matters. More information is available in Appendix C.

## Sectors

Privacy complaints can cover a broad range of sectors. The top six sectors remain unchanged from the 2016–17 results. The top 10 complaints by sector are:

**Table 3 — Top 10 sectors by complaints received**

Sector	Number
Finance (including superannuation)	398
Health service providers	321
Australian Government	305
Telecommunications	244
Credit reporting bodies	173
Retail	147
Online services	142
Utilities	120
Debt collectors	116
Insurance	104

### Case study 3 — Failure to protect personal information by an Australian Government agency

The complainant was notified by the respondent, an Australian Government agency, that a computer containing their personal information had been stolen from an office where it had not been stored securely.

The OAIC investigated the alleged failure to protect the complainant's personal information from misuse and loss. The matter was resolved by conciliation. The respondent provided the complainant with \$1,600 in compensation.

#### Case study 4 — Disclosure of medical information to a third party

The complainants, a couple, became aware that the respondent, a Medical Centre had disclosed their entire medical files to their insurer, including personal information that was not relevant to their insurance claim.

The matter was investigated and successfully conciliated by the OAIC. The respondent provided the complainants with a letter of apology, placed its privacy policy in its rooms and on its website, changed its procedures to ensure that a similar incident would not happen in the future, and provided \$5,000 to each of the complainants.

## Resolving complaints

In 2017–18, we substantially improved the average time taken to close a complaint from 4.7 months to 3.7 months. During this period, 97% of all privacy complaints were resolved within 12 months of receipt, an improvement on last year.

During 2017–18 we trialled an early resolution process, with a focus on bringing the parties together at an early stage to see if matters could be resolved by agreement. This approach has assisted parties to attain outcomes in a more timely manner, which is reflected in the improvement in the average time taken to close a complaint.

Matters that are unable to be resolved via the early resolution process proceed for further inquiries or investigation, and some are formally conciliated. Where complaints resolve through conciliation, many positive and innovative outcomes are achieved, and parties demonstrate a high level of satisfaction with the outcome.

To support the work of the teams in resolving complaints, we provide staff with conciliation training, and have a number of staff accredited under the National Mediator Accreditation Standards (NMAS).

Most privacy complaints are closed on the basis that the respondent has not interfered with the individual's privacy, or on the basis that the respondent has adequately dealt with the complaint.

In 2017–18, the main remedies achieved in complaints were:

1. Record amended
2. Compensation
3. Access provided
4. Other or confidential
5. Apology

More information is available in Appendix C.

### **Case study 5 — Security and disclosure of personal information by a bank**

The complainant was a customer of the respondent, a bank. There was fraudulent activity on the complainant's account. While the respondent was investigating the fraud, it misdirected an email meant for the complainant to a third party.

The complainant claimed the respondent interfered with their privacy by inappropriately disclosing personal information in the email, and failing to take reasonable steps in the circumstances to protect the personal information from unauthorised access and disclosure.

The OAIC conciliated the complaint, and the parties agreed to settle the matter on the basis that the respondent pay \$7,000, and follow up with the police about the progress of the fraud investigation. The amount of compensation reflected that the incident had also impacted another member of the complainant's family.

### **Case study 6 — Disclosure of personal information by an insurance assessor**

There was a fire at a house in which the complainant lived. The insurer sent a loss assessor (the respondent) to inspect the property. The respondent provided a report of the incident to the complainant's insurer, who passed it on to the complainant.

The complainant claimed that the respondent interfered with their privacy by amending the report and then disclosing it to the complainant's real estate agent. The complainant alleged that the amended report was used by the real estate agent in a way that caused the complainant distress.

The OAIC conciliated the complaint, and the parties agreed to settle the matter on the basis that the respondent pay \$2,000 in compensation. The respondent had previously apologised to the complainant.

## **Early resolution**

The OAIC's early resolution pilot was established in 2017. It brings the parties together at an early stage, to see if matters can be resolved by agreement between the parties. The process has reduced our initial response times and contributed to an increase in the number of complaints closed. In 2017–18, 53% of all complaints finalised were closed through our early resolution process.



### Case study 7 — Failure by telecommunications provider to protect personal information from unauthorised access

The complainant had a mobile phone account with the respondent, a telecommunications provider. The complainant's phone stopped working, and when they contacted the respondent they discovered the phone number had been ported (transferred to a different mobile provider) without their knowledge.

The matter was resolved through the OAIC's Early Resolution Process, in which the respondent contacted the complainant directly to discuss the matter, reversed the port, offered three months free service and apologised.

## Community and sector engagement

An important part of our role is interacting with key industry and community stakeholders, including government bodies and external dispute resolution schemes, about recurring or significant issues arising in complaints.

### External Dispute Resolution schemes

The Information Commissioner can recognise external dispute resolution (EDR) schemes to handle particular privacy-related complaints (section 35A of the Privacy Act). The EDR schemes currently recognised are:

- Credit and Investments Ombudsman (CIO)
- Energy & Water Ombudsman NSW (EWON)
- Energy & Water Ombudsman Queensland (EWOQ)
- Energy & Water Ombudsman SA (EWOSA)
- Energy and Water Ombudsman Victoria (EWOV)
- Energy and Water Ombudsman Western Australia (EWOWA)
- Financial Ombudsman Service (FOS)

- Public Transport Ombudsman Victoria (PTO)
- Telecommunications Industry Ombudsman (TIO)
- Tolling Customer Ombudsman (TCO)

### Community outreach

In 2017–18, we attended community outreach events to promote awareness of the privacy complaint functions of our office, and the ways in which individuals can access or protect their personal information and consumer credit reporting information. These events included the Sydney Disability Expo and a Privacy Awareness Week stall with the Australian Retail Credit Association.

During the year, we also continued to increase media and social media coverage about our complaint handling function with targeted messaging around the complaints process and privacy issues that may be of public interest.

## Determinations

Under section 52 of the Privacy Act, the Commissioner may make determinations in relation to privacy complaints. The Commissioner may also make determinations in relation to privacy Commissioner initiated investigations (CIIs).

In 2017–18, three privacy determinations were made by the Commissioner. Two of these determinations included findings that the respondents had not interfered with the individual's privacy and therefore the complaints were dismissed under section 51(1)(a) of the Privacy Act.

### ***Determination: 'PB' and United Super Pty Ltd as Trustee for Cbus (Privacy) [2018] AICmr 51 (23 March 2018)***

The Commissioner found that United Super Pty Ltd as Trustee for Cbus (Cbus) interfered with the privacy of class members by disclosing their personal information to an external organisation for a secondary purpose without their consent.

Under section 52(1)(b)(iii) of the Privacy Act the Commissioner may make a declaration that the complainant is entitled to a specified amount by way of compensation. In this instance, however, the Commissioner considered the most appropriate form of redress to the class members was a public apology.

The Commissioner also made a declaration that Cbus should provide written confirmation to the OAIC that certain corrective measures proposed after the breach were adopted and implemented by Cbus, and then to undertake a review of those measures and confirm in writing the findings and outcomes of that review.

### ***Determination: 'PA' and Department of Veterans' Affairs (Privacy) [2018] AICmr 50 (23 March 2018)***

The complainant alleged that the disclosure of their personal information by the Department of Veteran's Affairs (the Department) for inclusion in a database to assist in health research projects was a breach of APP 6 — Use or disclosure of personal information.

Section 95 of the Privacy Act allows an agency to commit an act that would breach an APP provided it is done in the course of medical research and in accordance with medical research guidelines approved by the Commissioner.

The Commissioner found that the medical research exemption applied in this case, as the disclosure of personal information occurred in the course of medical research, and in accordance with guidelines issued by the National Health and Medical Research Council. Therefore the Department did not interfere with the complainant's privacy.

### ***Determination: 'OJ' and Department of Home Affairs (Privacy) [2018] AICmr 35 (19 March 2018)***

The complainant alleged that the Department of Home Affairs (the Department) had interfered with his privacy by disclosing his personal information to the Department of Human Services Victoria (DHSV) in, or around, 2013 (the DHSV complaint), and to the television show, *A Current Affair* (ACA) in July 2014 (the ACA complaint).

The Department advised that it disclosed the complainant's personal information to DHSV in compliance with a subpoena. The

Commissioner found that the disclosure was required by law and comes within the exception to IPP 11, set out in 11.1(d).

As the ACA complaint was against the Department, not the Minister of Home Affairs (the Minister), the Commissioner could only consider the Department's use of personal information and its disclosure to the Minister's office. He was unable to consider the disclosure to ACA by the Minister.

The Commissioner found the use and disclosure of personal information was made for the purpose of discharging the Secretary of the Department's obligation under the *Public Service Act 1999* to provide the Minister with advice. As the conduct was required by law, it fell within the exception to APP 6, set out in APP 6.2(b).

## Data breach notifications

### Notifiable Data Breaches scheme

The NDB scheme commenced on 22 February 2018, following changes to the Privacy Act in 2017. Under the NDB scheme, Australian Government agencies and organisations with existing personal security obligations under the Privacy Act are required to notify individuals who are likely to be at risk of serious harm as a result of a data breach. The OAIC must also be notified.

Our responsibilities under the NDB scheme include:

- Receiving notifications of eligible data breaches.
- Encouraging compliance with the scheme, including handling complaints and taking regulatory action in response to instances of non-compliance.
- Offering advice and guidance to regulated organisations, and providing information to the community about the operation of the scheme.

In February 2018, we published a new resource on data breaches — 'Data breach preparation and response — A guide to managing data breaches in accordance with the *Privacy Act 1988* (Cth)'. This resource combines best practice advice for preparing for and responding to data breaches, as well as specific information for agencies and organisations about how to comply with the NDB scheme.

We have also published resources for individuals that have received a notification under the NDB scheme. These are available on our website, and are intended to assist individuals to take steps to reduce the risk of experiencing harm as a result of a data breach.

The OAIC reviews each notice received under the NDB scheme to consider whether the data breach has been contained, that the agency or organisation has taken reasonable steps to mitigate the impact of the breach on the individuals at risk of serious harm, and that the entity is taking reasonable steps to minimise the likelihood of a similar breach occurring again.

Since the introduction of the NDB scheme in February 2018, there has been an increasing number of notifications made to the OAIC. This demonstrates that agencies and organisations are aware of their obligations.

More detailed information about data breaches reported under the NDB scheme is contained in our NDB Quarterly Statistics Reports, available on our website.<sup>1</sup>

Voluntary data breaches

Prior to the introduction of the NDB scheme, the OAIC administered a voluntary data breach notification scheme. This allowed businesses and agencies to self-report possible privacy breaches to the OAIC. The OAIC continues to register voluntary data breach notifications for incidents that do not fall within the scope of the NDB scheme. These include data breaches that occurred prior to 22 February 2018, or incidents that do not involve businesses or agencies that are regulated by the scheme.

Table 4 — NDB, voluntary and mandatory My Health Records notifications

Year	2015–16	2016–17	2017–18
Notifiable data breaches (NDB)	-	-	305
Voluntary notifications	107	114	174
Mandatory notifications ( <i>My Health Records Act 2012</i> )	16	35	28
<b>Total</b>	<b>123</b>	<b>149</b>	<b>507</b>

In 2017–2018, the number of voluntarily reported data breaches continued to grow, with voluntary notifications up 53% on the previous year. This is significantly more than the 29% increase reported in the 2016–17 financial year. Alongside this, the OAIC met its overall target for finalising data breach notifications, with 99% of notifications under the NDB scheme finalised within 60 days, and 97% of voluntary data breach notifications finalised within 60 days.

The increase in voluntary notifications can be explained, at least in part, by the OAIC’s activities in raising awareness of the introduction of the NDB scheme in 2018, as well as global regulatory developments which focused on the importance of entities understanding and responding to data breaches.

We also administer a mandatory scheme for digital health data breaches. For further information, refer to the *Annual Report of the Australian Information Commissioner’s activities in relation to digital health 2017–18* (available on the OAIC website no later than 28 November 2018).

1 Where notifiable data breaches affect multiple entities, the OAIC may receive multiple notifications relating to the same data breach. Notifications under the NDB scheme to the OAIC relating to the same data breach incident are counted as a single notification in the NDB Quarterly Statistics Reports. In 2017–18 there were 49 secondary notices.

Privacy Commissioner  
initiated investigations

Section 40(2) of the Privacy Act enables an investigation of an act or practice that may be an interference with privacy, to take place on the Commissioner’s own initiative. This power is used to investigate possible privacy breaches that have come to our attention other than by way of an individual privacy complaint.

Privacy Commissioner initiated investigations (CIIs) are often conducted in response to incidents of significant community concern or discussion, or in response to notifications from third parties about potentially serious privacy problems. They may also be conducted in response to notifications about data breaches. Our key objective in undertaking a CII is improving the privacy practices of investigated entities.

The Commissioner may also decide to discontinue an investigation. This may be in matters where the Commissioner is satisfied that there has not been an interference with privacy, or the matter has been adequately dealt with by the respondent or that no further regulatory action is warranted under the circumstances.

The Privacy Act provides the Commissioner with the power to accept an ‘enforceable undertaking’ offered by a respondent. Three enforceable undertakings were offered by respondents in 2017–18 following a CII.

In 2017–18, we conducted preliminary inquiries or commenced an investigation in relation to 21 matters. In some matters, more than one respondent was identified which is reflected in the number of CIIs. In April 2018, the OAIC commenced an investigation into the acts and practices of Facebook, in relation to allegations that the personal information of Facebook users had been improperly collected by third party applications. As of the end of the 2017–18 financial year, this investigation is ongoing.

Table 5 — Privacy CIIs

Year	Number of CIIs
2015–16	17
2016–17	29
2017–18	21

While the average time taken to close CIIs in 2017–18 was 163 days, or approximately 23 weeks, the OAIC did not meet its target to finalise 80% of CIIs within eight months. Despite this, the OAIC closed 72% of CIIs within eight months and the OAIC remains committed to working with respondents to resolve issues of non-compliance and improve privacy practices.

**Case study 8 — Accidental disclosure of health information by a third-party provider**

In October 2016, the Australian Red Cross Blood Service (the Blood Service) was notified that a data file, which contained the personal information of approximately 550,000 prospective blood donors entered into the Blood Service's website, had been saved to a public-facing web server. The Blood Service immediately took steps to contain the breach, including temporarily closing the website and notifying individuals whose personal information had been involved.

The subsequent investigation found that the file had been inadvertently placed by an employee of a third-party provider, Precedent Communications Pty Ltd (Precedent), on a publicly accessible portion of a web server managed by Precedent. The investigation also found that the Blood Service did not have appropriate measures in place to protect information concurrently held by third-party providers, and did not take reasonable steps to destroy or de-identify information collected through the Blood Service website once it was no longer needed.

Following the incident, the Blood Service took numerous steps to enhance its information handling practices and offered an enforceable undertaking to commit to reviewing its compliance with, and the effectiveness of, its third party management policy and operating procedure within a six month period.

In response to this incident, Precedent invested in improving its information handling practices, and offered an enforceable undertaking to commit to strengthening its information security measures; improving its privacy management policies, statement and procedures; and improving staff privacy training.

### Case study 9 — Publication of a de-identified dataset

On 1 August 2016, the Department of Health (the Department) published a collection of Medicare Benefits Schedule (MBS) and Pharmaceutical Benefits Schedule (PBS) data. The dataset contained claims information for a 10% sample of people who had made a claim for payment of Medicare Benefits since 1984, or for payment of Pharmaceutical Benefits since 2003. Prior to publication, the Department of Health had taken a range of steps to de-identify the data set. However, in September 2016 researchers from the University of Melbourne identified a weakness in the technique used to encrypt Medicare service provider numbers in the dataset, allowing the encryption to be reversed. The Department immediately removed the dataset from public access; the Commissioner opened an investigation into the incident to determine if a breach of the Privacy Act had occurred.

The investigation found that the Department of Health improperly disclosed the information of service providers, but did not improperly disclose the personal information of patients. The investigation also found that the steps taken by the Department of Health to confirm personal information was removed from the dataset prior to its publication were inadequate relative to the sensitivity of the information and the context of its release.

The investigation was concluded by an enforceable undertaking offered by the Department of Health and accepted by the Commissioner, which provides for the OAIC's oversight of the Department of Health's ongoing review and enhancement of its data governance arrangements.

The incident provided key lessons for custodians of datasets when considering de-identification. In particular, deciding whether information has been de-identified to an extent suitable for public release requires careful and expert evaluation and consideration of the context of release, and appropriate processes and expertise should sit behind any decision to release de-identified personal information.

## Privacy assessments

In 2017–18 we assessed a range of sectors including loyalty programs, identity verification, telecommunications and government. We also conducted privacy assessments in the digital health sector. For more information on our digital health assessments, see page 69.

We use a range of methodology to conduct our assessments, including comprehensive and in-depth review of policy documents, interviews with staff and/or site inspections. Consistent with last year, 100% of the OAIC's recommendations were accepted or planned for action by businesses or government agencies being assessed.

### Loyalty programs

We commenced two new assessments of loyalty programs in Australia in the 2016–17 financial year. These assessments examined how personal information is managed in accordance with APP 1 — Open and transparent management of personal information. The assessments also looked at whether sufficient notification to individuals is provided regarding the collection of their personal information in accordance with APP 5 — Notification of the collection of personal information. The assessments will be finalised, and made public, during the 2018–19 financial year.

### Identity verification

In the 2016–17 financial year we commenced two assessments of Gateway Service Providers (GSPs) to the Document Verification Service (DVS) — VixVerify and Trulioo. The assessments examine how personal information collected through the DVS arrangement is handled by GSPs in accordance with APP 3 — Collection of solicited personal information and APP 5 — Notification of the collection of personal information. We finalised these assessments in the 2017–18 financial year, making one recommendation in each assessment. The assessment reports are published on our website. In 2017–18 we worked with the Department of Home Affairs to identify business users that will participate in our next assessment relating to the DVS, which will commence in 2018–19.



## Telecommunications

### **Case study 10 — Handling of personal information disclosed under the *Telecommunications (Interception and Access) Act 1979***

In 2017–18 we finalised an assessment of whether iiNet was taking reasonable steps to protect personal information when responding to requests for access by law enforcement agencies, as required under the *Telecommunications (Interception and Access) Act 1979* (TIA Act) and in accordance with APP 11 — Security of personal information. We had previously finalised similar assessments of Telstra, Vodafone and Optus. A combined summary report outlining the findings from each assessment is available on our website.

### **Case study 11 — Handling of personal information retained as part of the ‘data retention scheme’ under the *Telecommunications (Interception and Access) Act 1979***

In 2017–18 we began a series of assessments that consider whether certain telecommunications service providers are meeting their information security obligations under APP 11 — Security of personal information, with respect to the personal information they are required to retain under the ‘data retention scheme’ that came into full effect on 13 April 2017. We conducted the fieldwork for two assessments in 2017–18. These assessments will be finalised in 2018–19. Fieldwork for other assessments in this assessment series will commence in 2018–19.

## Government

### Passenger Name Record

Under our memorandum of understanding with the Department of Home Affairs we commenced a Passenger Name Record (PNR) data related assessment in the 2016–17 financial year which followed up the implementation of recommendations made in a previous assessment undertaken in 2015. The 2016–17 assessment also included consideration of Home Affairs' practices concerning the destruction and de-identification of PNR data. The assessment will be finalised during the 2018–19 financial year.

In 2017–18 we also commenced a new PNR data related assessment. This assessment looked at Home Affairs' connected information environment (CIE) project, and specifically how Home Affairs is implementing APP 11 — Security of personal information — to protect PNR data in the CIE. The assessment also considered whether Home Affairs is using and disclosing personal information in accordance with its obligations under APP 6. We have completed the fieldwork for this year's assessment and it will be finalised during the 2018–19 financial year.

### Contractual arrangements in relation to regional processing centres

In 2016–17 we commenced an assessment on the Home Affairs' privacy arrangements for Regional Processing Centres, including:

- General governance and privacy frameworks under APP 1 — Open and transparent management of personal information.

- How Home Affairs met its security obligations under APP 11 — Security of personal information, including through the use of contractual measures as required under section 95B of the Privacy Act.

We finalised this assessment during the 2017–18 financial year. We made four recommendations, which were agreed by Home Affairs. The assessment report is published on our website.

### *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*

In 2017–18 we finalised four assessments that considered how personal information was being handled by Home Affairs under the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Foreign Fighters Act). These assessments considered how personal information is handled through border clearance processes at Australian international airports, including biometric information collected by SmartGates (Schedule 5) and the Advanced Passenger Processing (AdPP) data exchanged between airlines and Home Affairs (Schedule 6). Three of these assessments commenced in the 2016–17 financial year:

- An assessment of the security arrangements that are in place to protect personal information after its collection by SmartGates. We made two recommendations in this assessment.
- An assessment of the steps that a third party provider to Home Affairs is taking to secure personal information collected through AdPP (Schedule 6). We made two recommendations in this assessment.
- An assessment of the procedures Home Affairs has in place to respond to an individual's request for access to their

personal information that was collected by SmartGates, in accordance with APP 12 — Access to personal information. We made one recommendation in this assessment.

- The fourth assessment in 2017–18 considered the steps that a third party to Home Affairs is taking to secure access to personal information that is held in the systems that support SmartGates. We did not make any recommendations in this assessment.

In 2017–18 we also followed up on Home Affairs' implementation of the three initial assessments relating to Schedules 5, 6 and 7 of the Foreign Fighters Act that were completed across the 2015–16 and 2016–17 financial years. At the close of the 2017–18 financial year:

- We were satisfied that Home Affairs had implemented the recommendations in the Schedule 7 assessment.
- We were satisfied that Home Affairs had either implemented or was taking steps to implement the recommendations in the Schedule 6 assessment.
- We had not received a response from Home Affairs to our follow-up of the Schedule 5 assessment.

### Tax file numbers

Under the Privacy (Tax File Number) Rule 2015 which regulates the collection, storage, use, disclosure, security and disposal of individuals' Tax File Number (TFN) information, six specified Australian Government agencies (Commissioner of Taxation/Australian Taxation Office, Australian Prudential Regulation Authority, Department of Human Services, Department of Education and Training, Department of

Veterans' Affairs and the Department of Social Services) have obligations to make a range of information publicly available in relation to how TFN information is to be handled.

In 2016–17 we commenced an assessment that looked at how the agencies meet their obligations. The assessment was conducted through a desktop review of each agency's website and a targeted survey questionnaire sent to each agency. This assessment was finalised in 2017–18, and we will release a combined summary report during the 2018–19 financial year.

### Universal Student Identifier

Under our MOU with the Department of Education and Training, acting through the Student Identifiers Registrar (the Registrar), we conducted a self-assessment of five registered training organisations' (RTOs') handling of student identifiers and associated personal information in accordance with the *Student Identifiers Act 2014* and the Privacy Act. The self-assessment looked at how these RTOs were managing personal information in accordance with APP 1 — Open and transparent management of personal information, and APP 5 — Notification of the collection of personal information. The OAIC will be releasing a combined report in the 2018–19 financial year, along with a number of recommendations resulting from the survey.

## ACT Government

Under our MOU with the ACT Government, we conducted two assessments of ACT Government agencies. These activities are reported on in more detail in the *Memorandum of Understanding with the Australian Capital Territory for the provision of privacy services 2017–18 Annual Report* (available on the OAIC website no later than 1 November 2018).

Appendix B on page 145 contains more information about our MOU with the ACT Government.

## Data-matching

We perform a number of functions to assist government agencies to understand their privacy requirements and adopt best privacy practice when undertaking data-matching activities.

Data-matching is the process of bringing together data sets that come from different sources and comparing those data sets with the intention of producing a match. A number of government agencies use data-matching to detect non-compliance, identify instances of fraud and to recover debts owed to the Australian Government. For example, the Australian Taxation Office (ATO) may match tax return data with data provided by banks to identify individuals or businesses that may be under-reporting income or turnover.

Government agencies that carry out data-matching activities must comply with the Privacy Act. Data-matching raises privacy risks because it involves analysing personal information about large numbers of people, the majority of whom are not under suspicion.

### Statutory data-matching

The Commissioner has statutory responsibilities under the *Data-matching Program (Assistance and Tax) Act 1990* (Data-matching Act). The Data-matching Act authorises the use of tax file numbers in data-matching activities undertaken by the Department of Human Services (DHS), the Department of Veterans' Affairs and the ATO. In previous years, we have conducted inspections of DHS's data-matching records to ensure compliance with the requirements of the Data-matching Act. Agencies have continued to rely less on matching using the tax file number, consequently this year we have again focused on providing advice and oversight of the data-matching activities outside of the Data-matching Act.

### Enhanced Welfare Payment Integrity

The 'Enhanced Welfare Payment Integrity — non-employment income data-matching measure' was announced in the 2015–16 Mid-Year Economic and Fiscal Outlook (MYEFO). It increases DHS' capability to conduct data-matching to identify non-compliance by welfare recipients.

This year, we conducted two privacy assessments of DHS's data-matching activities. The first of these assessments looked at DHS's non-employment income data matching (NEIDM) program, and

specifically how DHS addresses the requirements of APPs 1.2, 3 and 5 in relation to that program.

The other assessment considered APPs 10 and 13 by looking at how DHS ensures the quality of the personal information used in its Pay-As-You-Go (PAYG) data-matching program, and whether the PAYG program facilitates customer correction of personal information being used in the program. The draft reports for these assessments were provided to DHS for comment in May 2018, and we will work with DHS to finalise and publish the assessments in the 2018–19 financial year.

A third assessment, looking at how DHS addresses its obligations under APP 11 — Security of personal information, to secure the personal information used in both the NEIDM and PAYG programs, will take place early in the 2018–19 financial year.

### Data-matching under the voluntary guidelines

We administer the Guidelines on Data-matching in Australian Government Administration (Guidelines), which are voluntary guidelines to assist government agencies with adopting appropriate privacy practices when undertaking data-matching activities that are not covered by the Data-matching Act. This year we reviewed seven data-matching program protocols submitted by matching agencies including the Australian Tax Office and the Department of Human Services.

The Commissioner approved two requests for exemption from certain requirements of the Guidelines. A list of the exemptions that we approved can be found on our website.

## Digital health assessments

Health information is considered particularly sensitive. This sensitivity has been recognised in the *My Health Records Act 2012* (My Health Records Act) and *Healthcare Identifiers Act 2010* (HI Act), which regulate the collection, use and disclosure of information, and give the Information Commissioner a range of enforcement powers. This sensitivity is also recognised in the Privacy Act which treats health information as ‘sensitive information’.

We initiated one assessment relating to the My Health Record system in 2017–18; finalised one assessment which commenced in the previous reporting period; and continue to progress one assessment that began in the previous year. For further information, refer to the *Annual Report of the Australian Information Commissioner’s activities in relation to digital health 2017–18* (available on the OAIC website no later than 28 November 2018).

## Advice for businesses and agencies

Our teams provide advice for businesses and Australian Government agencies on their obligations under the Privacy Act. We also assist businesses and agencies achieve best practice in their approach to privacy management.

This year we issued advice on a variety of issues including:

- Adoption, use and disclosure of government related identifiers.
- Australian Government Agencies Privacy Code.
- Australian Government’s proposed Consumer Data Right Scheme.

- Credit reporting.
- Data breach notification requirements, including the Notifiable Data Breaches scheme.
- De-identification and re-identification.
- Digital identity systems.
- Direct marketing.
- External Dispute Resolution schemes.
- Government data-matching.
- Higher education proposals affecting handling of information about students.
- Law enforcement and national security.
- The My Health Records (MHR) system.
- New and emerging technologies.
- Online communications and privacy.
- Privacy implications of data analytics and related activities.
- Privacy and international agreements.
- Privacy and security, as part of the Attorney-General's Department's reforms to the Protective Security Policy Framework (PSPF).
- Telecommunications.

We also drafted submissions on issues such as:

- Privacy in the digital age.
- Mandating consumer credit reporting.
- National security laws.
- Digital identity.
- Digital economy.
- Financial hardship.
- Establishment of the Australian Financial Complaints Authority.
- New information-sharing arrangements under proposed legislation.
- National identity-matching services for biometric information.
- Non-consensual sharing of intimate images.
- Open Banking.
- Access to Medicare information.
- The redevelopment and audit of the Higher Education Data Collection.
- The secondary use framework for information contained in the My Health Record system.

### Case study 12 — Open Banking

In August 2017 the Treasury released an Issues Paper on the Review into Open Banking in Australia. This paper invited submissions on the most appropriate model for the Australian context and how best to implement such a model, including what data should be shared, with whom, and how to ensure data is kept secure and privacy is respected.

The OAIC provided a submission to the review, acknowledging the potential of Open Banking to give individuals greater choice and control over how their data is used, while highlighting some important implications that the new scheme may have for the handling of individuals' financial information, which many individuals consider especially sensitive. Many OAIC recommendations were reflected in the Final Open Banking Report, and the OAIC has continued to work with the Treasury on the development and implementation of the scheme, which is set to commence in July 2019.

Submissions can be read in full on the OAIC website.

## Resources

We published a number of new resources, guides and fact sheets in 2017–18.

In preparation for the commencement of the Notifiable Data Breaches scheme, we published guidance and a webinar, to assist Australian Government agencies and businesses to understand the new requirements. We also published guidance for consumers about what to expect when receiving a data breach notification and what actions they can take if they have been affected by a data breach.

In preparation for the implementation of the European Union's General Data Protection Regulation (GDPR) we published guidance to assist Australian Government agencies to understand whether the new requirements would apply to them.

We updated our 'Guide to securing personal information' to incorporate information about the Notifiable Data Breaches scheme, and to update references to information security resources.

To assist agencies and organisations to make the most of their valuable data resources, the OAIC released its final version of the Guide to Data Analytics, originally published as a consultation draft in 2016. We also collaborated with the CSIRO's Data61 to release a joint resource which provides detailed guidance on de-identification, the De-Identification Decision-Making Framework. We also released the OAIC's 'De-identification and the Privacy Act' resource to reflect this updated approach.

In preparation for the commencement of the Australian Government Agencies Privacy Code on 1 July 2018, we published a suite of resources to assist agencies to comply with their new obligations, including an Interactive

Privacy Management Plan and a Privacy Officer toolkit. We also conducted a webinar for agencies to assist in the completion of their Privacy Management Plans and developed and delivered a Privacy Officer training course to assist Privacy Officers to undertake their role under the Code.

We published a series of multimedia resources for healthcare providers, to help them understand their privacy obligations and the mandatory data breach notification requirements under the My Health Records Act.

## Privacy legislative instruments

Under the Privacy Act, the Commissioner has powers to make certain legislative instruments. These legislative instruments must comply with the requirements of the *Legislation Act 2003*. They are publicly available on the Federal Register of Legislative Instruments.

### ***Privacy (Australian Government Agencies — Governance) APP Code 2017***

On 26 October 2017, the Information Commissioner made the *Privacy (Australian Government Agencies — Governance) APP Code 2017* (the Code).

The Code commences on 1 July 2018 and applies to all Australian Government agencies subject to the Privacy Act (except for ministers). The Code sets out specific requirements and key practical steps that agencies must take as part of complying with Australian Privacy Principle 1.2. It requires agencies to move towards a best practice approach to privacy governance

to help build a consistent, high standard of personal information management across all Australian Government agencies.

The requirements of the Code include having a privacy management plan, appointing a Privacy Champion and Privacy Officer, undertaking Privacy Impact Assessments (PIAs) for all high privacy risk projects or initiatives that involve new or changed ways of handling personal information, and taking steps to enhance internal privacy capability.

### **Privacy (Australian Honours System) Temporary Public Interest Determination 2018**

On 13 March 2018, the Information Commissioner made Privacy (Australian Honours System) Temporary Public Interest Determination 2018. This followed an application for a public interest determination on 6 March 2018 from the Department of Home Affairs (Home Affairs).

This temporary public interest determination (TPID) allows Home Affairs to disclose Australian citizenship and permanent residency status information without breaching APP 6 — Use or disclosure of personal information, for a period of 12 months. The disclosures can be made to the Department of the Prime Minister and Cabinet and to the Office of the Official Secretary to the Governor-General for the purposes of their consideration of nominees for awards (such as those in the Australian honours system).

The TPID repealed Public Interest Determination No. 2 which had been in operation since 1991.

The Information Commissioner and Privacy Commissioner is considering the Home Affairs' application for a longer-term public interest determination.

### ***Privacy (Credit Reporting) Code 2014 (Version 2)***

The *Privacy (Credit Reporting) Code 2014* (CR Code) is a written code of practice about credit reporting that supplements the credit reporting provisions in the Privacy Act.

On 29 May 2018, the then acting Information Commissioner and acting Privacy Commissioner approved a variation of the CR Code. The variation was requested by the code developer, Australian Retail Credit Association (ARCA). The approved variation made a number of minor and technical amendments to the CR Code, including clarifying the grace period for disclosing repayment history information, the definition of 'consumer credit liability information', and requirements for notifying consumers about a default listing.

The varied CR Code was scheduled to commence on 1 July 2018. It must be included on the OAIC's Codes Register and registered on the Federal Register of Legislative Instruments.

The variation followed an independent review of the operation of the CR Code, conducted under paragraph 24.3 of the CR Code. Paragraph 24.3 requires the Australian Information Commissioner to initiate an independent review of the operation of the CR Code within three years of its commencement.

The OAIC engaged Pricewaterhouse Coopers (PwC) to seek feedback, through targeted and public consultation, on issues arising with regard to the interaction between



the Code and the Act; significant issues or concerns about the practical operation of the Code and any requirements of the CR Code which had not been complied with in practice. PwC's final report was published on 13 December 2017. The PwC review made recommendations and gave feedback on each of the CR Code provisions that were varied in the CR Code.

Some recommendations and important observations in the PwC review have not been addressed in the approved variations. The OAIC intends to consider these matters further in the 2018–19 financial year.

## Privacy awareness

This year we continued to raise awareness about privacy rights for individuals, and also helped Australian businesses and government agencies understand their privacy obligations.

'2018 marks 30 years of the *Australian Privacy Act 1988*. Since then, there have been remarkable changes in the way personal information is put to use across the world. Utilising personal information to engage with businesses, government, and each other online is an everyday occurrence. At the same time, the public benefits of increased data analysis and data mobility to research, policy-making, and the Australian economy are being actively sought.

This has reinforced the vital importance of privacy, which is integral to building and maintaining people's trust in both government agencies and businesses in their handling of personal information.

Privacy today is founded on the principles of transparency and accountability. It is about ensuring individuals can exercise choice and control and that the actions of organisations reflect the value of personal information to individuals' wellbeing and dignity.

To that end — 2018 is the year a number of regulatory developments were introduced in Australia that enhance privacy governance across the public and private sector. The Notifiable Data Breaches scheme came into force in February, formalising a long-standing community expectation for organisations to notify individuals affected by data breaches that are likely to result in serious harm. In just under two months time, Australian Government agencies must comply with the Australian Government Agencies Privacy Code. Internationally, on 25 May the European Union's (EU's) General Data Protection Regulation takes effect for all Australian businesses operating in the EU.'

Angelene Falk, then acting Information Commissioner and acting Privacy Commissioner, in 'Welcome to Privacy Awareness Week. A message from the acting Commissioner, 2018'.

### Reaching our audiences

This year we focused significant effort on preparing Australian Government agencies and businesses for the commencement of the NDB scheme in February 2018, and preparing agencies for the commencement of the Australian Government Agencies Privacy Code on 1 July 2018.

Reaching the community was also a focus for the OAIC, through targeted events and social media activity.

### Speaking engagements

This year we participated in 51 speaking engagements aimed at privacy professionals.

### Media

One of our aims this year was to increase media coverage of the NDB scheme and raise the public's awareness of privacy.

We achieved this as demonstrated by:

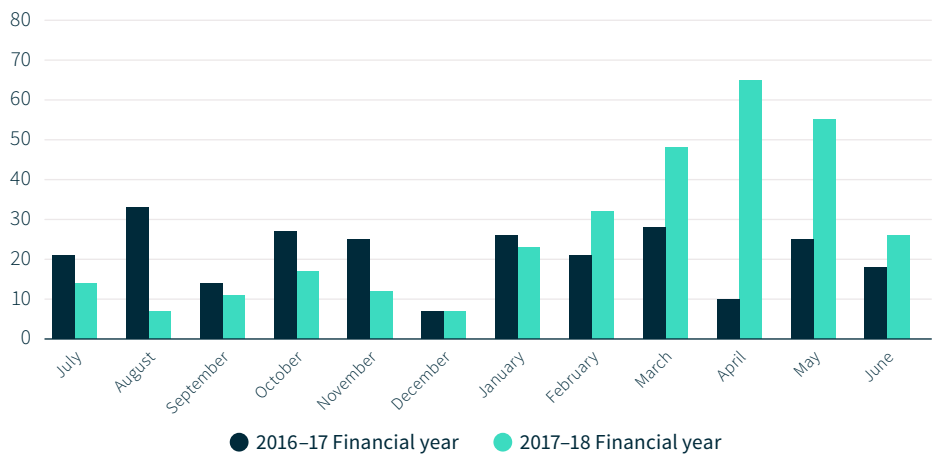
- An increase of 24% in media enquiries when compared with 2016–17.
- More than 310 mainstream media mentions during Privacy Awareness Week (compared to 250 in 2017).

The following graph shows the increase in reporting of privacy, and the spike when issues of community concern are covered, such as the commencement of an investigation into Facebook.

Table 6 — General privacy — media exposure

Received	2017-18	2016-17	% Change
Jul	14	21	-33%
Aug	7	33	-79%
Sep	11	14	-21%
Oct	17	27	-37%
Nov	12	25	-52%
Dec	7	7	0%
Jan	23	26	-12%
Feb	32	21	52%
Mar	48	28	71%
Apr	65	10	550%
May	55	25	120%
Jun	26	18	44%
Total	317	255	24%

Figure 3 — Media enquiries received



# Freedom of Information (FOI)

Freedom of Information (FOI) provides a legally enforceable right of access to government documents. It applies to Australian Government ministers and most agencies, although the obligations of agencies and ministers are different.

Individuals have rights under the FOI Act to request access to government documents. The FOI Act also requires government agencies to publish specified categories of information, it also allows them to proactively release other information.

Additional information regarding data collected from ministers and agencies subject to the FOI Act, and separately from the Administrative Appeals Tribunal, the

Commonwealth Ombudsman and our own records is included at Appendix D on page 152.

## FOI Enquiries

We respond to enquiries from the public on FOI issues, including our Information Commissioner review (IC review) function. This year our enquiries line answered 1,339 telephone calls related to FOI, and responded to 584 written FOI enquiries. We also assisted eight in-person FOI enquiries. Just over 49% of all enquiries about FOI matters related to general processes for FOI applicants, including how to make an FOI request or complaint, or seek review of an FOI decision.

Table 7 — FOI enquiries by issue\*

Issue	Number*
General processes	952
Jurisdiction	709
Processing by agency	174
Agency statistics	142
Access to general information	18
Access to personal information	18
Information Publication Scheme	10
Amendment and annotation	7
Vexatious application	6

\*There may be more than one issue in each enquiry.

## Information Commissioner (IC) reviews

In an Information Commissioner (IC) review, the Information Commissioner is able to review decisions made by Australian Government agencies and ministers subject to the FOI Act, including decisions:

- Refusing to grant access to documents wholly or in part.
- Where requested documents do not exist or cannot be found.
- Granting access to documents, where a third party has a right to object (for example, if a document contains their personal information).
- To impose charges for access to documents, including decisions refusing to waive or reduce charges.
- Refusing to amend or annotate records of personal information.

This year we experienced a significant increase in IC reviews, receiving 801 applications for review — a 27% increase over 2016–17.

Alongside the significant increase in the number of applications, the OAIC was able to finalise 610 IC reviews (an 18% increase compared to 2016–17 when 515 reviews were finalised). Of the 610 IC reviews finalised in 2017–18, 84% were finalised within 12 months, exceeding the target of 80% completed within 12 months.

### Informal resolution

The OAIC encourages resolution of IC reviews by agreement between the parties where possible. In 2017–18, 487 IC reviews were finalised without a formal decision being made (80% of all IC reviews finalised).

The number of IC reviews finalised under section 55F by way of a written agreement between the parties to the IC review has more than tripled since 2016–17. In 2017–18, 42 IC reviews were finalised by agreement under section 55F, in comparison to 14 in 2016–17.

There were 155 IC reviews finalised after the applicant withdrew their request, following action taken by the agency to resolve the issues in the IC review (such as by issuing a decision and statement of reasons in deemed access refusal cases, or a revised decision under section 55G to give the applicant access to further documents or material), or following an appraisal by the OAIC of the merits of their case.

### Information Commissioner (IC) review decisions under section 55K

Under section 55K of the FOI Act the Information Commissioner made 123 decisions during 2017–18 (20% of all IC reviews finalised). Of these:

- 37% set aside the decision under review (45 decisions).
- 8% varied the decision under review (10 decisions).
- 55% affirmed the decision under review (68 decisions).

Thirteen per cent of the reviewable decisions (nine decisions) affirmed had been revised under section 55G of the FOI Act during the IC review, giving greater

access to the documents sought. In 18% of decisions set aside and substituted (eight decisions), the agency had withdrawn certain exemption contentions during the course of the IC review.

The section 55K decisions published by the OAIC continue to be an important feature of the OAIC's work. The decisions address novel issues and build on existing jurisprudence in the FOI jurisdiction. They help agencies interpret the FOI Act and provide guidance on

the exercise of their powers and functions. The OAIC adopts a practical approach to its decision making and to its role in helping agencies meet their obligations under the FOI Act.

All IC review decisions are published on the AustLII website as part of the Australian Information Commissioner (AICmr) series.

Some Information Commissioner decisions made during 2017–18 are highlighted below.

### **Case study 13 — Elstone Pty Limited and Civil Aviation Safety Authority (Freedom of information) [2018] AICmr 52 (28 May 2018)**

The applicant sought access to a complaint that was made against its helicopter tour business, as well as the complainant's name or business name. On 24 August 2016, the Civil Aviation Safety Authority (CASA) identified one document within scope, and refused access to the document in full under sections 47E(d) and 47F of the FOI Act. On 20 February 2017, during the course of the IC review, CASA revised its decision under section 55G of the FOI Act to grant access to parts of the document.

On 17 May 2017, the Information Commissioner referred questions of law to the Federal Court of Australia (the Federal Court) with respect to the construction of section 55G. On 9 April 2018, the Federal Court decided in *Australian Information Commissioner v Elstone Pty Limited* [2018] FCA 463 that it lacked jurisdiction to determine the referred questions of law because there was no matter for consideration within the meaning of Chapter III of the Constitution. Accordingly, the then acting Information Commissioner proceeded to make her decision on the basis that the decision under review is CASA's decision of 24 August 2016, as varied on 20 February 2017.

The then acting Information Commissioner considered the document and agreed with CASA that disclosure of the relevant material that would identify the complainant, could discourage other individuals from raising safety concerns in the future and could reasonably be expected to have a substantial adverse effect on CASA's operations in carrying out its regulatory functions in relation to the safety of civil aviation. The then acting Information Commissioner also considered the public interest test, and was satisfied that disclosure would, on balance, be contrary to the public interest.

**Case study 14 — Josh Taylor and Prime Minister of Australia (Freedom of information) [2018] AICmr 42 (21 March 2018)**

The applicant sought access to all Wickr (instant messaging app) conversations between the then Prime Minister Malcolm Turnbull and former Prime Minister Kevin Rudd, regarding former Prime Minister Rudd seeking the government's nomination for Secretary-General of the United Nations. The Prime Minister decided to refuse access to the documents under section 24A of the FOI Act on the basis that they cannot be found or do not exist.

In making his decision, the Information Commissioner considered the nature of Wickr and found that users of the Wickr Me app can set the duration as to how long a message would last prior to its automatic deletion, up to a maximum of 6 days. The Information Commissioner noted that once a message has expired, the message would be securely destroyed from both the sender and recipient's devices, and that unless a backup of the message was made prior to the expiration of the message, it would be highly unlikely that the message would continue to be stored on the device or any other location.

Based on this, the Information Commissioner considered that undertaking searches within the app and any available backups for the documents would constitute all reasonable steps for the purposes of section 24A. In particular, the Information Commissioner noted that, based on the circumstances and the Prime Minister's evidence of searches and his submissions that there were no available backups of the apps, it was unlikely that the documents, if they existed, would be stored on the Prime Minister's phone or in any other location.

**Case study 15 — Paul Farrell and Department of Home Affairs (Freedom of information) [2018] AICmr 27 (28 February 2018)**

The Information Commissioner set aside the decision of the Department of Home Affairs (Home Affairs) to neither confirm nor deny the existence of documents regarding any disclosures made under section 19 of the *Australian Border Force Act 1995*. Home Affairs advised that if the documents were to exist they would be exempt under section 37(1) of the FOI Act.

The Information Commissioner found that the documents requested were not of 'such a kind' that they would be exempt under section 37(1). Accordingly, Home Affairs was not entitled to give notice to neither confirm nor deny the existence of the documents under section 25 when responding to the FOI request.

The Information Commissioner considered whether Home Affairs had discharged its onus in establishing the decision to invoke section 25 in response to the applicant's request. The Information Commissioner found that Home Affairs had not sufficiently demonstrated that exceptional circumstances existed. Accordingly, the Information Commissioner set aside the decision of Home Affairs to neither confirm nor deny the existence of the documents and substituted the decision that if documents were to exist, they would not be exempt as authorised under section 25.



**Case study 16 — Justin Warren and Department of Human Services (Freedom of information) [2018] AICmr 16 (1 February 2018)**

The applicant applied to the Department of Human Services (Human Services) for access to documents relating to the Pay As You Go data-matching initiative that was the subject of a Question on Notice from the Senate Community Affairs Legislation Committee Budget Estimates hearing on 3 June 2015. Human Services notified the applicant of its intention to impose a charge for the processing of the request. The applicant requested that Human Services reduce or waive the charge on public interest grounds. However, Human Services decided to impose a charge of \$510.

The applicant sought internal review and Human Services affirmed its decision on internal review. The applicant subsequently paid the charge and Human Services processed the request.

The applicant then sought IC review of Human Services' decision to impose a charge. Human Services submitted that the Information Commissioner did not have jurisdiction to review a charge that has been paid in full.

The Information Commissioner considered section 54L of the FOI Act, which provides that a person can seek IC review of an 'access refusal decision'. Section 53A(e) of the FOI Act provides that a decision under section 29 relating to imposition of a charge or the amount of a charge is an 'access refusal decision'.

Accordingly, the Information Commissioner was satisfied that a decision to impose a charge is an IC reviewable decision, despite the fact that the applicant has paid the charge in full. The Information Commissioner was also satisfied that Human Services had not discharged its onus under section 55D of the FOI Act to establish that the decision in respect of the charge is justified. The Information Commissioner decided that no charge should be imposed in relation to the applicant's request.

### **Case study 17 — Dan Conifer and the Department of the Treasury (Freedom of information) [2017] AICmr 133 (8 December 2017)**

The applicant sought access to briefs, advice and/or submissions from the Department of the Treasury to the Treasurer in relation to negative gearing, and Labor's negative gearing and capital gains tax policies. The Treasury identified seven documents within scope and decided that one document was exempt in part under section 34(1)(c), six documents were exempt in part under section 47C and one document was exempt in part under section 47G.

On IC review, the then Information Commissioner agreed with the Treasury's application of sections 34(1)(c) and 47G to the documents. However, he did not agree that the relevant documents were exempt under section 47C. In particular, he noted that the Treasury did not identify or provide any detail on any particular practice, process or policy that could reasonably be impacted through disclosure. The Information Commissioner found that although the relevant documents were conditionally exempt, disclosure at this time would not be contrary to the public interest.

### **Procedures to be followed in IC reviews**

In February 2018, the Information Commissioner issued a 'Direction as to certain procedures to be followed in IC reviews' (the procedure direction) under section 55(2)(e)(i) of the FOI Act. The procedure direction provides further clarity on what is expected from agencies and ministers during the IC review process and promotes the efficient and timely resolution of IC reviews. The procedure direction sets out the particular procedures that agencies and ministers must follow 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 during an IC review.

The procedure direction is to be read alongside the OAIC's 'Freedom of information regulatory action policy' (the FOI Regulatory Action Policy) and Part 10 of the Guidelines issued by the Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

The FOI Regulatory Action Policy was developed and published this year to inform the Australian community and Australian Government agencies and ministers covered by the FOI Act of the regulatory strategy and approach of the Information Commissioner with respect to FOI regulatory powers, including in undertaking IC reviews. The policy should be read together with Part 10 of the FOI Guidelines.

Part 10 of the FOI Guidelines, to which agencies must have regard in performing a function or exercising a power under the FOI Act, sets out in detail the process and underlying principles of IC review. Part 10 was updated this year to reflect legislative amendments by the *Norfolk Island Legislation Amendment Act 2015*, developments and discussions in recent IC review decisions and Information Commissioner processes in carrying out IC review functions, as well as to include references to the procedure direction and the FOI Regulatory Action Policy.

## FOI Complaints

Under section 69 of the FOI Act, the Information Commissioner has power to investigate agency actions relating to the handling of FOI matters.

Part 11 of the FOI Guidelines provides the Information Commissioner's view that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation and the matter can be dealt with more appropriately and effectively in that manner. IC review will ordinarily be the more appropriate avenue for a person to seek review of the merits of an FOI decision, particularly an access refusal or access grant decision. This approach accounts for the relatively small number of FOI complaints received compared with IC review applications.

In 2017–18, the OAIC received 62 complaints and closed 29. This represents a 72% increase in lodgements compared with 2016–17 (36 FOI complaints received) and a 61% increase in finalisations compared with 2016–17 (18 FOI complaints finalised).

The most common complaints about the handling of FOI matters by agencies are charging practices, consultation with applicants under practical refusal provisions and agencies not meeting statutory timeframes.

Of the 29 FOI complaints finalised in 2017–18, the Information Commissioner finalised four investigations and made recommendations to be implemented by an agency in two of these investigations.

## FOI Extensions of time

The FOI Act sets out timeframes within which agencies and ministers must process FOI requests.

Where an agency or minister is unable to process an FOI request within the processing period, they are able to request an extension of time from the FOI applicant or the Information Commissioner.

Where the applicant agrees to an extension of time in writing, the agency or minister must advise the Information Commissioner of the agreement to extend the statutory processing time as soon as practicable.

An agency or minister can apply to the Information Commissioner for an extension of time to extend the processing period where an agency or minister is able to demonstrate that the processing of the FOI request has been delayed because the FOI request is voluminous or complex in nature (section 15AB) or where the agency or minister has been unable to process the request within the statutory timeframe and the agency or minister is deemed to have made a decision refusing the FOI request (section 15AC).

**Table 8 — Overview of FOI extension of time notifications and requests received**

Year	2015–16	2016–17	2017–18
Received	5,605	4,412	3,367
Closed	5,602	4,420	3,333

This year, we finalised 90.5% of extension of time applications within five working days.

**Table 9 — Notifications and extension of time requests closed**

Request type	2015–16	2016–17	2017–18
Section 15AA	5,171	3,808	2,762
Section 15AB	283	453	370
Section 15AC	102	112	122
Section 51DA	0	0	1
Section 54B	0	0	0
Section 54D	30	29	38
Section 54T	16	18	40
<b>Total</b>	<b>5,602</b>	<b>4,420</b>	<b>3,333</b>

Section 15AA — Notification of agreement between agency and applicant to extend time.

Section 15AB — Extension of time for complex or voluminous request.

Section 15AC — Extension of time where deemed refusal of FOI request.

Section 54B — Extension of time for internal review request.

Section 54D — Extension of time where deemed affirmation of original decision on internal review.

Section 54T — Extension of time for person to apply for IC review.

In deciding whether to grant an extension of time, the Information Commissioner considers the impact the extension of time will have on the applicant, whether the agency or minister has taken realistic steps to process the FOI request, and whether granting extra time is within the objects of the Act.

## FOI Vexatious applicant declarations

The Information Commissioner has the power to declare a person to be a vexatious applicant if they are satisfied that the grounds set out in section 89L of the FOI Act exist. Making a vexatious applicant declaration is not something the Information Commissioner undertakes lightly, but its use may be appropriate at times. A declaration by the Information Commissioner can be reviewed by the Administrative Appeals Tribunal (AAT).

During 2017–18, the Information Commissioner did not receive any applications from agencies under section 89K seeking to have a person declared a vexatious applicant. Two applications were finalised in 2017–18 after the applications were withdrawn by the agency.

## FOI Awareness

### FOI Guidelines

In January and February 2018, the Information Commissioner issued revised guidelines under section 93A of the FOI Act, which Australian Government ministers and agencies must have regard to when performing a function or exercising a power under the FOI Act. The revised parts include:

- Part 3 — Processing and deciding on requests for access.
- Part 7 — Amendment and annotation of personal records.
- Part 10 — Review by the Information Commissioner.
- Part 11 — Complaints and investigations.

### FOI agency resources

In June 2018, the OAIC issued the revised FOI agency resource 14: Access to government information — administrative access. The OAIC sought comments from interested stakeholders about the readability and accessibility of the revised resource.

### Newsletters

The OAIC issues a monthly e-newsletter to Government FOI contact officers who have subscribed to the Information Contact Officer Network (ICON). The monthly e-newsletter provides news, updates and information about FOI.

### Events

The OAIC participated in various activities throughout the year to raise awareness about accessing government information and the role of the OAIC and its processes. We participated in the Australian Government Solicitor's FOI Practitioners' Forum and launched the first Right to Know Day digital campaign, which included awareness raising materials and a video from the Information Commissioner.

We also held an ICON information session in Canberra, which explored ongoing and emerging challenges in the FOI space and included an expert panel discussion.

## Media

The Information Commissioner issued a joint media release with the Australian Information Access Commissioners about International Right to Know Day on 21 September 2017:

**A citizen's right to access government-held information and data, participate in government decision making, and have transparency in how decisions are made is central to any effective democracy.**

**Right to Know Day is an opportunity for all Australians and New Zealanders to reflect on their access rights and the benefits of a more open, transparent and accountable government. It is also a reminder to government that greater access to government information and data can deliver better public services, strengthen economic outcomes and build public trust and confidence in the public sector.**

Australia and New Zealand Information Access Commissioners unite for citizens' Right to Know

### **Joint Media Statement**

21 September 2017

## Information Publication Scheme

In 2017–18 the OAIC conducted an IPS survey with all Australian Government agencies subject to the FOI Act. The survey was conducted by ORIMA on behalf of the OAIC.

The survey reviewed the operation of the IPS in each agency and also provided agencies with an opportunity to comply with the requirement to conduct a review under section 9 of the FOI Act. Section 9 requires agencies to complete a review of the operation of the IPS within their agency, as appropriate from time to time and within five years of the commencement of the IPS, in conjunction with the Information Commissioner.

The information collected in the IPS Survey will be used by the OAIC to develop a high level report on the operation of the IPS across all Australian Government agencies and provide a comparative analysis with the results of the 2012 IPS Survey. The 2018 IPS Survey report will be published on the OAIC's website.

The information collected may also be used to assist the OAIC understand agencies' approaches to the publication of information and identify ways the OAIC can provide advice, assistance and training to agencies on the operation of the IPS in the future.

## FOI Regulatory Action Policy

In 2017–18, the OAIC published an FOI Regulatory Action Policy that outlines and explains the Information Commissioner's approach to using FOI regulatory action powers. The policy covers all FOI powers and functions conferred on the Information Commissioner by the *Australian Information Commissioner Act 2010* and the FOI Act.

The policy should be read together with the FOI guidelines. The policy also outlines how the Information Commissioner works with agencies, ministers and regulators to promote access to information through regulatory action and undertakes public communication as part of FOI regulatory action.

## FOI processing statistics received from Australian Government agencies and ministers

Below is a selection of the FOI request processing statistics provided by Australian Government agencies and ministers to the OAIC.

The number of FOI requests received declined 13% in 2017–18; from 39,519 in 2016–17 to 34,438. This decline was experienced in both requests for personal information and non-personal requests, with similar percentage falls across both types of requests. The decline in request numbers for personal information is in large part due to the introduction by the Department of Home Affairs of an administrative access scheme for access to personal information.

In 2017–18, 28,199 or 82% of all FOI requests were for documents containing personal information. This is the same proportion as in 2016–17 but a decrease when compared with 2015–16 (87%).

In 2017–18, the Department of Home Affairs, the Department of Human Services and the Department of Veterans' Affairs together continued to receive the majority of FOI requests (69% of the total). Of these, 96% were for personal information.



The percentage of FOI requests processed within the applicable statutory time period increased from 58% of all FOI requests in 2016–17 to 85% in 2017–18, largely due to the improvement in timeliness by the Department of Home Affairs.

The percentage of FOI requests granted in full decreased from 55% of all requests in 2016–17 to 50%. The number of requests refused increased from 10% of all FOI requests in 2016–17 to 16%.

The personal privacy exemption in section 47F of the FOI Act remains the most claimed exemption (43% of all exemptions claimed).

The total reported costs attributable to processing FOI requests in 2017–18 was \$52.2 million, a 17% increase on 2016–17 (\$44.8 million).

Australian Government agencies issued 4,128 notices advising of an intention to refuse a request for a practical refusal reason in 2017–18. This was a 163% increase on the number issued in 2016–17. Of these requests, 84% were subsequently refused or withdrawn; the proportion was 66% in 2016–17.

There was a 24% decrease in the total charges notified in 2017–18 and a 21% decrease in the total charges collected by Australian Government agencies (to \$115,863).

The total number of entries added to agency website disclosure logs in 2017–18 (1,104) is 15% higher than 2016–17, when 958 entries were added. This increase occurred despite there being a 13% decrease in the number of full or partial access grant decisions in 2017–18. However the proportion of entries from which members of the public can directly access disclosure log documents from agency websites has declined from 67% last year to 57%.

There was a 12% increase in internal review applications in 2017–18. Of the 733 decisions on internal review, 351 (48%) affirmed the original decision, 72 (10%) set aside the original decision and granted access in full, 217 (30%) granted access in part.

More detailed information is available in Appendix D on page 152.

# 3

Part 3

Management and accountability

Corporate governance	92
External scrutiny	94
Human resources	95
Procurement	99
Other requirements	100

## Corporate governance

Setting strategic direction, implementing effective policies and processes, and monitoring progress are key elements of the OAIC's corporate governance framework.

### Enabling legislation

The OAIC was established in November 2010 as an independent statutory agency under the *Australian Information Commissioner Act 2010* (AIC Act). The OAIC is responsible for privacy functions that are conferred by the *Privacy Act 1988* (Privacy Act) and other laws.

The OAIC has FOI functions, including the oversight of the operation of the *Freedom of Information Act 1982* (FOI Act) and review of decisions made by agencies and ministers under that Act.

The OAIC is accountable as a non-corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The OAIC has annual reporting responsibilities under section 46 of the PGPA Act. It also has a range of reporting and other responsibilities under legislation generally applicable to Australian Government authorities.

### Portfolio structure and responsible minister

The OAIC is a statutory authority within the Attorney-General's portfolio. The minister responsible is the Hon Christian Porter MP.

### Executive

The OAIC Executive, comprising the Commissioner, Deputy and Assistant Commissioners, meets weekly and oversees all aspects of the OAIC's business covering corporate management and performance, finance, human resources, governance, risk management, external engagement and business planning.

## Risk management

Our risk management framework helps staff assess risks, make informed decisions, confidently engage with risk and harness its opportunities.

The OAIC Executive regularly considers and reviews the risks faced by the agency and the reports on risk received from the Audit Committee.

## Audit Committee

Our Audit Committee assists the Commissioner to discharge their responsibilities on the OAIC's finances and performance, risk oversight and management, and system of internal control. The Audit Committee oversees the work of the OAIC's internal auditors, ensures the Annual Work Program is adhered to and ensures appropriate coverage of our strategic and operational risks.

The Audit Committee is chaired by a member of the OAIC Executive and has two independent members. During the year the independent member from the Inspector-General of Intelligence and Security was replaced by the National Disability Insurance Scheme Agency. The second independent member is from the Australian Human Rights Commission (AHRC). Representatives from the Australian National Audit Office (ANAO) attend meetings of the Audit Committee as observers.

## Corporate services

We have a memorandum of understanding (MOU) with the AHRC that covers the provision of corporate services. This includes financial, administrative, information and communications technology and human resources services. We also sublease our premises in Sydney from the AHRC under this arrangement. More information on the OAIC's MOU with the AHRC can be found in Appendix B.

## External scrutiny

In September 2017 the ANAO published its performance audit report into the Administration of the *Freedom of Information Act 1982* which was an across agency audit including the OAIC.

In our response to the report we said:

‘The OAIC welcomes external scrutiny of its operations and will seek to use the useful engagement we have had with the ANAO during the course of this audit, and the contents of the report, to assist us in our continuous endeavours to improve our operations in accordance with our statutory responsibilities to the benefit of the Australian community.

The OAIC also welcomes the acknowledgement in the report the OAIC has been through a sustained period of uncertainty between the 2014 and 2016 budgets, when responsibility for undertaking a large slice of the OAIC’s FOI functions and associated resourcing was withdrawn from the OAIC and distributed to other agencies. Now that that period is behind us the OAIC is pursuing all of its statutory FOI regulatory activity, taking into account our resourcing and balancing our priorities across all of our statutory functions.

The OAIC agrees with the ANAO’s recommendation to create an FOI regulatory action policy. The OAIC’s 2017–18 Corporate Plan contains a commitment to develop an FOI regulatory action policy. Although aspects of such a document are already contained in the FOI Guidelines the OAIC acknowledges that pulling this information together and expanding on it in a single policy document will assist agencies and the public better understand the OAIC’s approach to its FOI regulatory activity.’

The OAIC’s FOI regulatory action policy was published in February 2018 and is available on our website.

## Human resources

At the OAIC we strive to provide a workplace that offers fulfilling and challenging work, as well as promoting the professional and personal development of our employees. As the national expert in both privacy and FOI regulation, we rely on a team of highly skilled and competent staff.

In 2017–18, the OAIC continued to build capacity within the existing workforce, developing the necessary skillsets to meet the heightened demands for privacy and information management for the Australian public, government agencies and wider industry.

### Our people

As a small agency in a competitive market, the OAIC continues to face challenges in recruiting and retaining skilled people. We use a number of strategies including online and social media advertising to attract talent.

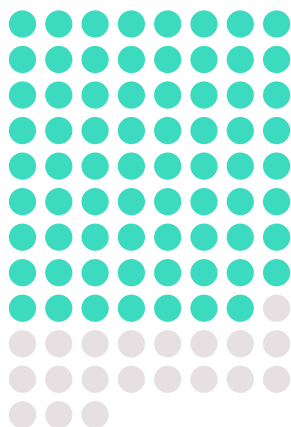
This year we had an average staffing level of 75. During the year turnover was approximately 20.5% for ongoing staff. This involved fifteen ongoing staff resigning, retiring or transferring to other Australian Government agencies. We had thirteen ongoing staff join the OAIC during the year. As of 30 June 2018, we had 81.2 full-time equivalent (FTE) staff, including ongoing and non-ongoing employees.

**Table 10 — Staffing profile as at 30 June 2018**

Classifications	Male	Female	Full-time	Part-time	Total ongoing	Total non-ongoing	Total
Statutory Office Holders*	0	0	0	0	0	0	0
SES Band 2	0	1	1	0	1	0	1
SES Band 1	1	1	1	1	2	0	2
Executive Level 2 (\$117,996–\$134,662)	1	8	5	4	8	1	9
Executive Level 1 (\$101,586–\$108,667)	5	17	14	8	19	3	22
APS 6 (\$80,607–\$88,764)	5	35	37	3	34	6	40
APS 5 (\$73,101–\$77,281)	3	5	4	4	3	5	8
APS 4 (\$65,570–\$69,671)	3	6	9	0	6	3	9
<b>Total</b>	<b>18</b>	<b>73</b>	<b>71</b>	<b>20</b>	<b>73</b>	<b>18</b>	<b>91</b>

\*The Statutory Office Holder position was vacant following the retirement of the Australian Information Commissioner and was filled on a temporary basis from 24 March to 30 June 2018 (Angelene Falk was appointed to the position on 16 August 2018 for a three year term).

## Employment statistics



### Our staff

**91**

Total staff

### Employment type

**71**

Full-time



**20**

Part-time



### Gender

**73**

Female

**18**

Male

### Diversity

**22%**

Non-English speaking background

**1.1%**

Indigenous



## Learning and development

We are committed to ongoing learning and development of our staff, recognising the importance of building and developing capabilities to meet current and future needs.

Our work is increasingly becoming more technical as the digital environment becomes more complex, and we are also seeing more complex and substantive complaints and investigations compared to previous years.

Staff are able to access a range of learning and development opportunities in line with the Australian Public Service Commission's 70-20-10 model of learning.

The OAIC provides the following components as part of its learning and development program for staff.

### Talking about performance (TAP)

The OAIC's Performance Management and Development Scheme 'Talking about performance' provides regular and formal assessment of staff members' work performance and to identify learning and development needs.

### Professional skills development

Staff undertake specialised training to ensure they are continuously building on their subject-matter expertise and able to access the latest information from industry and government.

This year relevant staff attended specialist training in decision writing, administrative and public law, statutory conciliation and investigation, mediation, plain English language, managing unreasonable

complainant conduct, leadership and management, auditing skills and report writing.

### Study and professional membership assistance

The OAIC encourages staff to undertake study to develop their knowledge and skills in relevant areas. Study assistance provides skilled and knowledgeable staff for current and future OAIC requirements and supports staff in meeting their learning and development needs.

## Benefits

We offer our people the following non-salary related benefits:

- Flexible working arrangements including home-based work where appropriate.
- Employee assistance program.
- Extended purchase leave.
- Maternity and adoption leave.
- Parental leave.
- Leave for personal compelling reasons and exceptional circumstances.
- Access to paid leave at half pay.
- Flextime (APS staff).
- Study assistance.
- Support for professional and personal development.
- Healthy lifestyle reimbursement.
- Eyesight testing and reimbursement of prescription glasses.
- Family care rooms.
- Influenza vaccinations.

## Workplace relations

The OAIC's Enterprise Agreement 2016–19 was approved by the Fair Work Commission on 5 May 2016.

In 2017–18, seven Executive members and other staff received performance pay or were under individual flexibility arrangements, Australian workplace agreements or common law contracts.

## OAIC Consultation Forum

The OAIC Consultation Forum provides an opportunity for the OAIC, its employees and their representatives to meet and consider issues relating to working at the OAIC.

## Statutory Office Holder and SES remuneration

The Remuneration Tribunal determines the terms and conditions of the OAIC's statutory office holder. Remuneration for the OAIC's Senior Executive Service (SES) officers is governed by determinations made by the Commissioner under section 24(1) of the *Public Service Act 1999*.

## Workplace diversity

Currently 22% of staff have a non-English speaking background and 1.1% identify as Indigenous.

In 2016–17 the OAIC established a Diversity Committee which is led by the acting Deputy Commissioner and includes representatives from the Regulation and Strategy Branch, enquiries line, Dispute Resolution Branch and the Strategic Communications and Coordination sections. The Committee is responsible for driving the OAIC's wider diversity strategy and coordinating the OAIC's obligations under Multicultural Access and Equity Reporting.

## Work health and safety

We share expertise and resources on Work Health and Safety (WHS) issues with the Australian Human Rights Commission. Our WHS representatives are members of the joint agencies' WHS Committee. We conduct regular site inspections as a preventative measure and there have been no significant incidents reported by staff over the past year. All new staff are provided with WHS information upon commencement and ongoing support and assistance is offered to our people.

## Procurement

In 2017–18, we complied with the government’s purchasing policies as stated in the Commonwealth Procurement Rules. We encourage competition, value for money, transparency and accountability.

All contracts were awarded after ensuring the efficient, effective, economical and ethical use of Australian Government resources.

In 2017–18, no contracts were exempt from reporting on AusTender on the basis that publishing contract details would disclose exempt matters under the FOI Act. All awarded contracts valued at \$100,000 (GST inclusive) or greater contained standard clauses granting the Auditor-General access to contractors’ premises.

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.

During 2017–18, we entered into four consultancy contracts. The total actual expenditure for these contracts was \$239,693 (excluding GST). No consultancy contracts from previous periods were continued into this period.

Prior to engaging consultants, we take into account the skills and resources required for the task, the skills available internally and the cost-effectiveness of engaging external expertise. All the decisions that we make relating to consultancy contracts are made in accordance with the *Public Governance, Performance and Accountability Act 2013* and related regulations including the Commonwealth Procurement Rules.

This report contains information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.

## Consultants

We engage consultants where we lack specialist expertise or when independent research, review or assessment is required.

Typically, we only engage consultants to:

- Investigate or diagnose a defined issue or problem.
- Carry out defined reviews or evaluations.
- Provide independent advice, information or creative solutions to assist with our decision making.

## Small business

The OAIC supports small business participation in the Commonwealth Government procurement market and engage with small businesses wherever appropriate during our work. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance’s website. We also recognise the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.

## Other requirements

### Advertising and market research

During 2017–18 we conducted the following survey:

The OAIC entered into a contract with Orima Research to conduct the 2018 Information Publication Scheme (IPS) Survey of Australian Government agencies that are subject to the FOI Act. The survey was conducted by Orima on behalf of the OAIC.

The survey reviewed the operation of the IPS in each agency and also provided agencies with an opportunity to comply with the requirement to conduct a review under section 9 of the FOI Act. The total spend was \$92,393 (GST exclusive). The open tender was published on AusTender. Further information is on the OAIC website and the survey results will be published in the 2018–19 financial year.

Information on the value of contracts and consultancies is available on the AusTender website.

### Grant programs

No grant programs took place during 2017–18.

### Fraud

We have a fraud control plan, fraud control policy and guidelines which are made available to all staff through internal communication channels.

### Memoranda of understanding

We receive funding for specific services under a range of memoranda of understanding. Details can be found at Appendix B.

## Disability reporting

Since 1994, Australian Government departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's State of the Service Report and the APS Statistical Bulletin. These reports are available at [www.apsc.gov.au](http://www.apsc.gov.au). From 2010–11, government departments and agencies have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by the National Disability Strategy 2010–2020, which sets out a ten-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high level two-yearly report will track progress against each of the six outcome areas of the strategy and present a picture of how people with disability are faring. The first of these reports can be found at [www.dss.gov.au](http://www.dss.gov.au)


## Ecologically sustainable development and environment performance

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires the OAIC to report on how its activities accord with the principles of ecologically sustainable development. Our role and activities do not directly link with the principles of ecologically sustainable development or impact on the environment, other than through our business operations regarding the consumption of resources required to sustain our operations. We use energy saving methods in the OAIC's operation and endeavour to make the best use of resources.

## Information Publication Scheme

As required by the FOI Act, we have an Information Publication Scheme entry on our website that provides information on our structure, functions, appointments, annual reports, consultation arrangements, FOI officer, information we routinely release following FOI requests and information we routinely provide to the Australian Parliament.

# 4



## Part 4

# Financial statements



## INDEPENDENT AUDITOR'S REPORT

### To the Attorney-General

#### Opinion

In my opinion, the financial statements of the Office of the Australian Information Commissioner for the year ended 30 June 2018:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Office of the Australian Information Commissioner as at 30 June 2018 and its financial performance and cash flows for the year then ended.

The financial statements of the Office of the Australian Information Commissioner, which I have audited, comprise the following statements as at 30 June 2018 and for the year then ended:

- Statement by the Accountable Authority and Chief Finance Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement; and
- Notes to the financial statements, comprising a Summary of Significant Accounting Policies and other explanatory information.

#### Basis for Opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Office of the Australian Information Commissioner in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) to the extent that they are not in conflict with the *Auditor-General Act 1997*. I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

#### Accountable Authority's Responsibility for the Financial Statements

As the Accountable Authority of the Office of the Australian Information Commissioner the Australian Information and Privacy Commissioner is responsible under the *Public Governance, Performance and Accountability Act 2013* for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under that Act. The Australian Information and Privacy Commissioner is also responsible for such internal control as the Australian Information and Privacy Commissioner determines is necessary to enable the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Australian Information and Privacy Commissioner is responsible for assessing the Office of the Australian Information Commissioner's ability to continue as a going concern, taking into account whether the entity's operations will cease as a result of an administrative restructure or for any other reason. The Australian Information and Privacy Commissioner is also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.



### Auditor's Responsibilities for the Audit of the Financial Statements

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office



Bola Oyetunji  
Senior Executive Director  
Delegate of the Auditor-General  
Canberra  
11 September 2018

## Office of the Australian Information Commissioner

### STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2018 comply with subsection 42(2) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act), and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Office of the Australian Information Commissioner will be able to pay its debts as and when they fall due.



Angelene Falk  
Australian Information Commissioner

11 September 2018



Brenton Attard  
Acting Chief Financial Officer

11 September 2018

## Statement of Comprehensive Income

for the period ended 30 June 2018

	Notes	2018 \$'000	2017 \$'000	Original Budget \$'000
<b>NET COST OF SERVICES</b>				
<b>Expenses</b>				
Employee Benefits	1.1A	9,481	8,674	9,507
Suppliers	1.1B	4,271	3,989	4,474
Depreciation and Amortisation	2.2A	530	501	440
Write-Down and Impairment of Assets	1.1C	-	2	-
<b>Total expenses</b>		<b>14,282</b>	13,166	14,421
<b>Own-Source Income</b>				
<b>Own-source revenue</b>				
Rendering of Services	1.2A	2,590	2,824	3,587
Other Revenue	1.2B	36	36	-
<b>Total own-source revenue</b>		<b>2,626</b>	2,860	3,587
<b>Gains</b>				
Other Gains	1.2C	1	1	33
<b>Total gains</b>		<b>1</b>	1	33
<b>Total own-source income</b>		<b>2,627</b>	2,861	3,620
<b>Net cost of by services</b>		<b>(11,655)</b>	(10,305)	(10,801)
Revenue from Government	1.2C	10,711	10,618	10,361
<b>Surplus/(Deficit) attributable to the Australian Government</b>		<b>(944)</b>	313	(440)
<b>OTHER COMPREHENSIVE INCOME</b>				
<b>Items subject to subsequent reclassification to net cost of services</b>				
Changes in asset revaluation surplus		19	3	-
<b>Total other comprehensive income</b>		<b>19</b>	3	-

The above statement should be read in conjunction with the accompanying notes.

**Budget Variances Commentary**

The major variances on the Statement of Comprehensive Income are depreciation and amortisation, rendering of services revenue, revenue from Government and the operating deficit.

A contributor to the Office of the Australian Information Commissioner's (OAIC) financial statement variances in general relates to the decision to internally fund various critical projects during the reporting period.

Rendering of services revenue reflects variations to memorandums of understanding with other government departments during the financial year. Those variations resulted in a reduction of revenue.

Depreciation and amortisation reflects the review of assets completed during the reporting period.

During the 2017–18 Portfolio Additional Estimates the OAIC received an additional \$350,000 as appropriated funding after the whole of government savings measure detailed at Note 3.1A.

The operating deficit relates to the above variances that were not known at the time of Budget preparation resulting in deficit after accounting for depreciation and amortisation.

**Statement of Financial Position***as at 30 June 2018*

	Notes	2018 \$'000	2017 \$'000	Original Budget \$'000
<b>ASSETS</b>				
<b>Financial assets</b>				
Cash	2.1A	589	2,711	893
Trade and Other Receivables	2.1B	5,072	3,588	3,057
<b>Total financial assets</b>		<b>5,661</b>	6,299	3,950
<b>Non-financial assets</b>				
Infrastructure, Plant and Equipment	2.2A	977	1,287	677
Intangibles	2.2A	610	648	469
Other Non-Financial Assets	2.2B	79	93	72
<b>Total non-financial assets</b>		<b>1,666</b>	2,028	1,218
<b>Total assets</b>		<b>7,327</b>	8,327	5,168
<b>LIABILITIES</b>				
<b>Payables</b>				
Suppliers	2.3A	1,174	1,011	576
Other Payables	2.3B	1,698	1,292	614
<b>Total payables</b>		<b>2,872</b>	2,303	1,190
<b>Non-interest bearing liabilities</b>				
Lease Incentives	2.4A	729	970	496
<b>Total non-interest bearing liabilities</b>		<b>729</b>	970	496
<b>Provisions</b>				
Employee Provisions	4.1A	1,745	2,148	1,893
<b>Total provisions</b>		<b>1,745</b>	2,148	1,893
<b>Total liabilities</b>		<b>5,346</b>	5,421	3,579
<b>Net assets</b>		<b>1,981</b>	2,906	1,589
<b>EQUITY</b>				
Contributed equity		2,013	2,013	2,013
Reserves		172	154	151
Retained surplus/(Accumulated deficit)		(205)	739	(575)
<b>Total equity</b>		<b>1,981</b>	2,906	1,589

The above statement should be read in conjunction with the accompanying notes.

**Budget Variances Commentary**

The major variances on the Statement of Financial Position are financial assets, non-financial assets, payables, non-interest bearing liabilities and equity. As noted on the Statement of Comprehensive Income, a contributing factor to these variations were the internally funded projects and activities during the reporting period.

The cash balance and other receivables reflects a timing difference between funds held in the OAIC's day to day operating bank account and appropriations receivable in the Official Public Account (OPA). The OAIC generally maintains a working bank account balance by transferring funds from the OPA when required. Note 2.1B provides details of the receivables.

Prepayments are the only other non-financial asset held by the OAIC and includes insurance premium and annual subscription costs. The payables variance arose the timing difference for supplier payables at year-end and the above mentioned projects.

Commentary on equity variance is included on the Statement of Changes in Equity.

## Statement of Changes in Equity

for the period ended 30 June 2018

	2018 \$'000	2017 \$'000	Original Budget \$'000
<b>CONTRIBUTED EQUITY</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	2,013	2,013	2,013
<b>Adjusted opening balance</b>	<b>2,013</b>	2,013	2,013
<b>Closing balance as at 30 June</b>	<b>2,013</b>	2,013	2,013
<b>RETAINED EARNINGS</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	739	430	(135)
Other Adjustments	-	(4)	-
<b>Adjusted opening balance</b>	<b>739</b>	426	(135)
<b>Comprehensive income</b>			
Surplus/(Deficit) for the period	(944)	313	(440)
Other comprehensive income	-	-	-
<b>Total comprehensive income</b>	<b>(944)</b>	313	(440)
<b>Closing balance as at 30 June</b>	<b>(205)</b>	739	(575)
<b>ASSET REVALUATION RESERVE</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	154	151	151
<b>Adjusted opening balance</b>	<b>154</b>	151	151
<b>Comprehensive income</b>			
Other comprehensive income	19	3	-
<b>Total comprehensive income</b>	<b>19</b>	3	-
Transfers between equity components	-	-	-
<b>Closing balance as at 30 June</b>	<b>173</b>	154	151
<b>TOTAL EQUITY</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	2,906	2,594	2,029
Other Adjustments	-	(4)	-
<b>Adjusted opening balance</b>	<b>2,906</b>	2,590	2,029

### Statement of Changes in Equity (continued)

for the period ended 30 June 2018

	2018 \$'000	2017 \$'000	Original Budget \$'000
<b>Comprehensive income</b>			
Surplus/(Deficit) for the period	(944)	313	(440)
Other comprehensive income	19	3	-
<b>Total comprehensive income</b>	<b>(925)</b>	316	(440)
<b>Transactions with owners</b>			
<b>Contributions by owners</b>			
<b>Total transactions with owners</b>	-	-	-
<b>Closing balance as at 30 June</b>	<b>1,981</b>	2,906	1,589

The above statement should be read in conjunction with the accompanying notes.

#### Accounting Policy

##### Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

#### Budget Variances Commentary

The major variance on the Statement of Changes in Equity relates to retained earnings, comprehensive income and other comprehensive income.

As a non-corporate Commonwealth entity and in accordance with net cash appropriation arrangements the OAIC budgets for a break-even operating result, adjusted for depreciation and amortisation expense. During the reporting period a combination of factors as outlined in the commentary on the Statement of Comprehensive Income resulted in greater operating deficit.

Other comprehensive income relates entirely to the asset revaluation reserve and is determined by independent valuation of the OAIC's infrastructure, plant and equipment at 30 June each year. The movement of asset values cannot be reliably estimated at the time of original budget preparation.



## Cash Flow Statement

for the period ended 30 June 2018

	Notes	2018 \$'000	2017 \$'000	Original Budget \$'000
<b>OPERATING ACTIVITIES</b>				
<b>Cash received</b>				
Appropriations		10,711	10,618	10,361
Cash Transferred from the Official Public Account		1,500	4,636	-
Rendering of services		3,395	2,711	3,587
Net GST received		411	308	110
<b>Total cash received</b>		<b>16,017</b>	<b>18,273</b>	<b>14,058</b>
<b>Cash used</b>				
Employees		(9,879)	(8,337)	(10,597)
Suppliers		(4,769)	(4,523)	(4,451)
Section 74 receipts transferred to OPA		(3,328)	(3,148)	(2,173)
<b>Total cash used</b>		<b>(17,976)</b>	<b>(16,008)</b>	<b>(17,221)</b>
<b>Net cash from/(used by) operating activities</b>		<b>(1,959)</b>	<b>2,265</b>	<b>(3,163)</b>
<b>INVESTING ACTIVITIES</b>				
<b>Cash used</b>				
Purchase of infrastructure, plant and equipment		-	(219)	(65)
Purchase of intangibles		(163)	-	-
<b>Total cash used</b>		<b>(163)</b>	<b>(219)</b>	<b>(65)</b>
<b>Net cash from/(used by) investing activities</b>		<b>(163)</b>	<b>(219)</b>	<b>(65)</b>
<b>FINANCING ACTIVITIES</b>				
<b>Net cash from/(used by) financing activities</b>		<b>-</b>	<b>-</b>	<b>-</b>
<b>Net increase/(decrease) in cash held</b>		<b>(2,122)</b>	<b>2,046</b>	<b>(3,228)</b>
Cash and cash equivalents at the beginning of the reporting period		2,711	665	4,121
<b>Cash and cash equivalents at the end of the reporting period</b>	2.1A	<b>589</b>	<b>2,711</b>	<b>893</b>

The above statement should be read in conjunction with the accompanying notes.

**Budget Variances Commentary**

The major variances on the Cash Flow Statement include cash received, cash used and purchase of intangibles.

As noted on the commentary on the Statement of Comprehensive Income and Statement of Financial Position, the OAIC internally fund various critical projects completed during the reporting period which impacted on cash received and cash used activities as well as the purchase of intangibles.

Cash received activities were further varied due to increased funding received during the 2017-18 Additional Estimates process and variations to memorandums of understanding.

## Overview

### Objectives of the Office of the Australian Information Commissioner

The Office of the Australian Information Commissioner (OAIC) is an Australian Government controlled entity established under the *Australian Information Commissioner Act 2010*.

During the reporting period the OAIC sought approval from Government to increase its original budgeted break-even position, adjusted for depreciation and amortisation expense, and undertake various critical and time sensitive projects which were internally funded.

The OAIC is structured to meet the following outcome:

Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of Information Commissioner, freedom of information and privacy functions.

The OAIC activities contributing toward this outcome are classified as departmental. Departmental activities involve the use of assets, liabilities, income and expenses controlled or incurred by the OAIC in its own right.

### The Basis of Preparation

The financial statements are general purpose financial statements and are required by section 42 of the Public Governance, Performance and Accountability Act 2013. The financial statements have been prepared in accordance with:

- a) Public Governance, Performance and Accountability (Financial Reporting) Rule 2015 (FRR) for reporting periods ending on or after 1 July 2015; and
- b) Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.
- c) Australian Accounting Standards and Interpretations – Reduced Disclosure Requirements issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars.

### New Accounting Standards

#### *Adoption of New Australian Accounting Standard Requirements*

No accounting standard has been adopted earlier than the application date as stated in the standard. No new, revised, amending standards and interpretations that were issued prior to the sign-off date and are applicable to the current reporting period have a material effect, or expected to have a future material effect, on the OAIC's financial statements.

### *Future Australian Accounting Standard Requirements*

The following new standards and interpretations were issued by the Australian Accounting Standards Board prior to the signing of the statement by the Accountable Authority and Chief Financial Officer, which are expected to have a material impact on the OAIC's financial statements for future reporting period(s):

Standard/ Interpretation	Application date for the OAIC <sup>1</sup>	Nature of impending change/s in accounting policy and likely impact on initial application
AASB 15 Revenue from Contracts with customers	1 July 2019	<p>This standard establishes principles for reporting information about the nature, amount, timing and uncertainty of revenue and cash flows arising from the OAIC's contracts with customers, with revenue recognised as 'performance obligations' are satisfied; and will apply to contracts of NFP entities that are exchange transactions. AASB 1004 Contributions will continue to apply to non-exchange transactions until the Income for NFP project is completed. The effective date was modified by 2015-8 for for-profit entities and 2016-7 Not-For-Profit entities.</p> <p>Depending on the nature of the transaction and the OAIC's current policy, the new Standard may have a significant impact on the timing of the recognition of revenue. Final outcome will need to be considered once the related Income for NFP project is completed.</p>
AASB 16 Leases	1 July 2019	The standard will require the net present value of payments under most operating leases to be recognised as assets and liabilities. An initial assessment indicates that the implementation of the standard may have a substantial impact on the financial statements and the property lease will create a right of use asset and lease liability.

### **Taxation**

The OAIC is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

### **Events After the Reporting Period**

The OAIC is not aware of any significant events that have occurred since balance date that warrant disclosure in these financial statements.

<sup>1</sup> All other new, revised, amending standards and interpretations that were issued prior to the sign-off date and are applicable to future reporting period(s) are not expected to have a future material impact on the OAIC's financial statements.

## Financial Performance

This section analyses the financial performance of the Office of the Australian Information Commissioner for the year ended 2018

### 1.1 Expenses

	2018	2017
	\$'000	\$'000

#### 1.1A: Employee Benefits

Wages and salaries	7,387	6,730
Superannuation		
Defined contribution plans	861	808
Defined benefit plans	381	356
Leave and other entitlements	735	743
Separation and redundancies	2	-
Other employee expenses	115	37
<b>Total employee benefits</b>	<b>9,481</b>	<b>8,674</b>

#### Accounting Policy

Accounting policies for employee related expenses is contained in the People and relationships section.

#### 1.1B: Suppliers

##### Goods and services supplied or rendered

Insurance	22	21
Office consumables	23	21
Official travel	240	281
Printing and publications	44	75
Professional services and fees	2,646	2,295
Property outgoings	317	246
Reference materials, subscriptions and licenses	82	204
Staff training	239	143
Telecommunications	20	27
Other	89	110
<b>Total goods and services supplied or rendered</b>	<b>3,722</b>	<b>3,423</b>

**1.1 Expenses (continued)**

	2018 \$'000	2017 \$'000
Goods supplied	149	299
Services rendered	3,573	3,124
<b>Total goods and services supplied or rendered</b>	<b>3,722</b>	<b>3,423</b>
<b>Other suppliers</b>		
Operating lease rentals in connection with		
Related parties	-	-
Subleases	531	531
Workers compensation expenses	18	35
<b>Total other suppliers</b>	<b>549</b>	<b>566</b>
<b>Total suppliers</b>	<b>4,271</b>	<b>3,989</b>

**Leasing commitments**

The OAIC in its capacity as sub-lessee leases office accommodation that is subject to the provisions of the headlease. The initial periods of accommodation are still current and there are two options in the headlease agreement to renew.

**Commitments for minimum lease payments in relation to non-cancellable operating leases are payable as follows:**

Within 1 year	1,266	1,220
Between 1 to 5 years	2,553	3,813
<b>Total operating lease commitments</b>	<b>3,819</b>	<b>5,033</b>

**1.1C: Write-Down and Impairment of Assets**

Impairment on assets	-	2
<b>Total write-down and impairment of assets</b>	<b>-</b>	<b>2</b>

**Accounting Policy**

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease.

**1.2 Own-Source Revenue and gains**

	2018	2017
	\$'000	\$'000

**OWN-SOURCE REVENUE****1.2A: Rendering of Services**

Rendering of services	2,590	2,824
<b>Total sale of goods and rendering of services</b>	<b>2,590</b>	<b>2,824</b>

**Accounting Policy**

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

**1.2B: Other Revenue**

Resources received free of charge

Remuneration of auditors	36	36
<b>Total other revenue</b>	<b>36</b>	<b>36</b>

**Accounting Policy***Resources Received Free of Charge*

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

**1.2 Own-Source Revenue and gains (continued)**

	2018	2017
	\$'000	\$'000

**GAINS****1.2C: Other Gains**

Sale of assets	1	1
<b>Total other gains</b>	<b>1</b>	<b>1</b>

**Accounting Policy***Sale of Assets*

Gains from disposal of assets are recognised when control of the asset has passed to the buyer.

**1.2C: Revenue from Government**

## Appropriations

Departmental appropriations	10,711	10,618
<b>Total revenue from Government</b>	<b>10,711</b>	<b>10,618</b>

**Accounting Policy***Revenue from Government*

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the entity gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.



## Financial Position

This section analyses the Office of the Australian Information Commissioner's assets used to conduct its operations and the operating liabilities incurred as a result. Employee related information is disclosed in the People and relationships section.

### 2.1 Financial Assets

	2018 \$'000	2017 \$'000
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#### 2.1A: Cash

Cash on hand and at bank	589	2,711
<b>Total cash and cash equivalents</b>	<b>589</b>	<b>2,711</b>

#### Accounting Policy

Cash is recognised at its nominal amount. Cash and cash equivalents includes cash on hand.

#### 2.1B: Trade and Other Receivables

##### Goods and services receivables

Goods and services	652	1,031
<b>Total goods and services receivables</b>	<b>652</b>	<b>1,031</b>

##### Appropriations receivables

Appropriation receivable	4,325	2,497
<b>Total appropriations receivables</b>	<b>4,325</b>	<b>2,497</b>

##### Other receivables

GST Receivable from the Australian Taxation Office	95	60
<b>Total other receivables</b>	<b>95</b>	<b>60</b>
<b>Total trade and other receivables (gross)</b>	<b>5,072</b>	<b>3,588</b>

##### Total trade and other receivables (net)

<b>5,072</b>	<b>3,588</b>
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##### Trade and other receivables (net) expected to be recovered

No more than 12 months	5,072	3,588
<b>Total trade and other receivables (net)</b>	<b>5,072</b>	<b>3,588</b>

#### Accounting Policy

##### Receivables

Receivables are measured at amortised cost using the effective interest method less impairment.

## 2.2 Non-Financial Assets

### 2.2A: Reconciliation of the Opening and Closing Balances of Infrastructure, Plant and Equipment

#### Reconciliation of the opening and closing balances of Infrastructure, plant and equipment for 2018

	Leasehold Improvements \$'000	Computer, Plant and Equipment \$'000	Computer, Plant and Equipment – Work in Progress \$'000	Total \$'000
<b>As at 1 July 2017</b>				
Gross book value	1,248	39	-	1,287
Accumulated depreciation, amortisation and impairment	-	-	-	-
<b>Total as at 1 July 2017</b>	<b>1,248</b>	<b>39</b>	<b>-</b>	<b>1,287</b>
<b>Additions</b>				
Purchase	-	-	-	-
Work-in-progress transfer	-	-	-	-
Revaluations and impairments recognised in other comprehensive income	17	2	-	19
Depreciation and amortisation	(312)	(17)	-	(329)
Disposals	-	-	-	-
<b>Total as at 30 June 2018</b>	<b>953</b>	<b>24</b>	<b>-</b>	<b>977</b>
<b>Total as at 30 June 2018 represented by</b>				
Gross book value	953	24	-	977
Accumulated depreciation, amortisation and impairment	-	-	-	-
<b>Total as at 30 June 2018</b>	<b>953</b>	<b>24</b>	<b>-</b>	<b>977</b>

No indicators of impairment were found for intangibles.

No infrastructure, plant and equipment is expected to be sold or disposed of within the next 12 months.

## 2.2 Non-Financial Assets (continued)

### Revaluations of non-financial assets

All revaluations were conducted in accordance with the revaluation policy stated at Note 2.2. On 30 June 2018, an independent valuer conducted the revaluations.

#### Reconciliation of the opening and closing balances of Infrastructure, plant and equipment for 2017

	Leasehold Improvements \$'000	Computer, Plant and Equipment \$'000	Computer, Plant and Equipment – Work in Progress \$'000	Total \$'000
<b>As at 1 July 2016</b>				
Gross book value	1,313	27	27	1,367
Accumulated depreciation, amortisation and impairment	-	-	-	-
<b>Total as at 1 July 2016</b>	<b>1,313</b>	<b>27</b>	<b>27</b>	<b>1,367</b>
<b>Additions</b>				
Purchase	201	19	-	220
Work-in-progress transfer	-	27	(27)	-
Revaluations and impairments recognised in other comprehensive income	(2)	5	-	3
Depreciation and amortisation	(262)	(39)	-	(301)
Disposals	(2)			(2)
<b>Total as at 30 June 2017</b>	<b>1,248</b>	<b>39</b>	<b>-</b>	<b>1,287</b>
<b>Total as at 30 June 2017 represented by</b>				
Gross book value	1,248	39	-	1,287
Accumulated depreciation, amortisation and impairment	-	-	-	-
<b>Total as at 30 June 2017</b>	<b>1,248</b>	<b>39</b>	<b>-</b>	<b>1,287</b>

## 2.2 Non-Financial Assets (continued)

### Reconciliation of the opening and closing balances of intangibles for 2018

	Intangibles \$'000	Total \$'000
<b>As at 1 July 2017</b>		
Gross book value	2,619	2,619
Accumulated depreciation, amortisation and impairment	(1,971)	(1,971)
<b>Total as at 1 July 2017</b>	<b>648</b>	<b>648</b>
Additions	43	43
Work-in-progress transfer	120	120
Depreciation and amortisation	(201)	(201)
<b>Total as at 30 June 2018</b>	<b>610</b>	<b>610</b>
<b>Total as at 30 June 2018 represented by</b>		
Gross book value	2,782	2,782
Accumulated depreciation, amortisation and impairment	(2,172)	(2,172)
<b>Total as at 30 June 2018 represented by</b>	<b>610</b>	<b>610</b>

No indicators of impairment were found for intangibles.

No intangibles are expected to be sold or disposed of within the next 12 months.

### Reconciliation of the opening and closing balances of intangibles for 2017

	Intangibles \$'000	Total \$'000
<b>As at 1 July 2016</b>		
Gross book value	2,619	2,619
Accumulated depreciation, amortisation and impairment	(1,772)	(1,772)
<b>Total as at 1 July 2016</b>	<b>847</b>	<b>847</b>
Depreciation and amortisation	(199)	(199)
<b>Total as at 30 June 2017</b>	<b>648</b>	<b>648</b>
<b>Total as at 30 June 2017 represented by</b>		
Gross book value	2,619	2,619
Accumulated depreciation, amortisation and impairment	(1,971)	(1,971)
<b>Total as at 30 June 2017 represented by</b>	<b>648</b>	<b>648</b>

Accounting Policy

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor’s accounts immediately prior to the restructuring.

Asset Recognition Threshold

Purchases of infrastructure, plant and equipment are recognised initially at cost in the statement of financial position, except for purchases costing less than \$5,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

Revaluations

Following initial recognition at cost, plant and equipment are carried at fair value. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets did not differ materially from the assets’ fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date was eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation

Depreciable infrastructure, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the OAIC using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2018	2017
Leasehold improvements	Lease term	Lease term
Computer, plant and equipment	4 to 10 years	4 to 10 years

*Impairment*

All assets were assessed for impairment at 30 June 2018. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the OAIC were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

*Derecognition*

An item of plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

*Intangibles*

The OAIC's intangibles comprise software developed for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the OAIC's software are 2 to 5 years (2016: 2 to 5 years).

All software assets were assessed for indications of impairment as at 30 June 2018.

**Accounting Judgements and Estimates**

The fair value of infrastructure, plant and equipment has been taken to be the market value of similar assets as determined by an independent valuer.

**2.2 Non-Financial Assets (continued)**

	2018 \$'000	2017 \$'000
<b>2.2B: Other Non-Financial Assets</b>		
Prepayments	79	93
<b>Total other non-financial assets</b>	<b>79</b>	<b>93</b>
<b>Other non-financial assets expected to be recovered</b>		
No more than 12 months	79	93
<b>Total other non-financial assets</b>	<b>79</b>	<b>93</b>

No indicators of impairment were found for other non-financial assets.

**2.3 Payables**

	2018	2017
	\$'000	\$'000

**2.3A: Suppliers**

Trade creditors and accruals	848	644
Rent Payable	326	367
<b>Total suppliers</b>	<b>1,174</b>	<b>1,011</b>

**Suppliers expected to be settled**

No more than 12 months	901	707
More than 12 months	273	304
<b>Total suppliers</b>	<b>1,174</b>	<b>1,011</b>

Settlement is generally made in accordance with the terms of the supplier invoice.

**2.3B: Other Payables**

Salaries and wages	71	54
Superannuation	11	11
Other employee expenses	5	16
Revenue received in advance	1,611	1,211
<b>Total other payables</b>	<b>1,698</b>	<b>1,292</b>

**Other payables to be settled**

No more than 12 months	1,698	1,292
<b>Total other payables</b>	<b>1,698</b>	<b>1,292</b>

## 2.4 Non-Interest Bearing Liabilities

	2018	2017
	\$'000	\$'000

### 2.4A: Non-Interest Bearing Liabilities

Lease incentives	729	970
<b>Total lease incentives</b>	<b>729</b>	<b>970</b>

### Minimum lease payments expected to be settled

Within 1 year	242	228
Between 1 to 5 years	487	742
<b>Total lease incentives</b>	<b>729</b>	<b>970</b>

#### Accounting Policy

Refer to Note 1.1.B



# Funding

This section identifies the Office of the Australian Information Commissioner's funding structure.

## 3.1 Appropriations

### 3.1A: Annual Appropriations ('Recoverable GST exclusive')

#### Annual Appropriations for 2018

	Annual Appropriation <sup>1</sup> \$'000	Adjustments to appropriation <sup>2</sup> \$'000	Total appropriation \$'000	Appropriation applied in 2018 (current and prior years) \$'000	Variance <sup>3</sup> \$'000
<b>Departmental</b>					
Ordinary annual services	10,711	566	11,277	(14,377)	(3,100)
<b>Total departmental</b>	10,711	566	11,277	(14,377)	(3,100)

- 1 In 2017–18, there was an amount of \$29,000 withheld (Section 51 of the PGPA Act) appropriation relating to Attorney-General's Portfolio efficiencies.
- 2 Adjustments including for PGPA Act Section 74 receipts.
- 3 Variance represents the application of current and previous years appropriation and own-source revenue.

3.1 Appropriations (continued)

Annual Appropriations for 2017

	Annual Appropriation <sup>1</sup> \$'000	Adjustments to appropriation <sup>2</sup> \$'000	Total appropriation \$'000	Appropriation applied in 2018 (current and prior years) \$'000	Variance <sup>3</sup> \$'000
Departmental					
Ordinary annual services	10,618	2,631	13,249	(12,689)	560
Total departmental	10,618	2,631	13,249	(12,689)	560

1 In 2016–17, there was an amount of \$3,653 withheld (Section 51 of the PGPA Act) appropriation relating to the whole of government Govlink savings measure

2 Adjustments including for PGPA Act Section 74 receipts.

3 Variance represents the application of current and previous years appropriation and own-source revenue.

3.1B: Unspent Annual Appropriations ('Recoverable GST exclusive')

	2018 \$'000	2017 \$'000
Departmental		
Appropriation Act (No.1) 2017–18	3,328	-
Appropriation Act (No.1) 2016–17	997	2,497
Cash held by the OAIC	589	2,711
Total departmental	4,914	5,208

3.2 Net Cash Appropriation Arrangements		
	2018 \$'000	2017 \$'000
Total comprehensive income/(loss) less depreciation/amortisation expenses previously funded through revenue appropriations	(414)	814
Plus: depreciation/amortisation expenses previously funded through revenue appropriation	(530)	(501)
<b>Total comprehensive income - as per the Statement of Comprehensive Income</b>	<b>(944)</b>	<b>313</b>

## People and relationships

This section describes a range of employment and post employment benefits provided to our people and our relationships with other key people.

### 4.1A: Employee Provisions

	2018 \$'000	2017 \$'000
Leave	1,745	2,148
<b>Total employee provisions</b>	<b>1,745</b>	<b>2,148</b>
<b>Employee provisions expected to be settled</b>		
No more than 12 months	1,339	1,690
More than 12 months	406	458
<b>Total employee provisions</b>	<b>1,745</b>	<b>2,148</b>

#### Accounting policy

Liabilities for short-term employee benefits and termination benefits expected within twelve months of the end of reporting period are measured at their nominal amounts.

##### *Leave*

The liability for employee benefits includes provision for annual leave and long service leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the OAIC's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the work of an actuary performed for the Department of Finance (DoF) and summarised in the Standard Parameters for use in 2015–16 Financial Statements published on the DoF website. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

##### *Separation and Redundancy*

Provision is made for separation and redundancy benefit payments. The OAIC recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

**Accounting policy (continued)**

*Superannuation*

The OAIC's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), or the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian Government.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in the Department of Finance's administered schedules and notes.

The OAIC makes employer contributions to the employees' defined benefit superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The OAIC accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the financial year.

**Accounting Judgements and Estimates**

The long service leave has been estimated in accordance with the FRR taking into account expected salary growth, attrition and future discounting using the government bond rate.

**4.2 Key Management Personnel Remuneration**

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the OAIC, directly or indirectly, including any director (whether executive or otherwise) of the OAIC. The OAIC has determined the key management personnel to be the Australian Information Commissioner, Senior Executive Service Officers and the Chief Financial Officer. Key management personnel remuneration is reported in the table below:

	2018 \$'000	2017 \$'000
Short-term employee benefits	1,186	958
Post-employment benefits	169	119
Other long-term employee benefits	21	115
Termination benefits	393	-
<b>Total key management personnel remuneration expenses<sup>1</sup></b>	<b>1,769</b>	<b>1,192</b>

The total number of key management personnel that are included in the above table are 4 (2018: 4).

1 The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the entity.

### 4.3 Related Party Disclosures

**Related party relationships:**

The OAIC is an Australian Government controlled entity. Related parties to this entity are Key Management Personnel including the Portfolio Minister and Executive, and other Australian Government entities.

**Transactions with related parties:**

Given the breadth of Government activities, related parties may transact with the government sector in the same capacity as ordinary citizens. Such transactions include the payment or refund of taxes, receipt of a Medicare rebate or higher education loans. These transactions have not been separately disclosed in this note.

The following transactions with related parties occurred during the financial year:

Significant transactions with related parties can include:

- the payments of grants or loans;
- purchases of goods and services;
- asset purchases, sales transfers or leases;
- debts forgiven; and
- guarantees.

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the entity, it has been determined that there are no related party transactions to be separately disclosed.

## Managing uncertainties

This section analyses how the Office of the Australian Information Commissioner manages financial risks within its operating environment.

### 5.1 Contingent Assets and Liabilities

#### Quantifiable Contingencies

As at 30 June 2018 the Office of the Australian Information Commissioner had no quantifiable contingent liabilities.

#### Unquantifiable Contingencies

As at 30 June 2018 the Australian Information Commissioner (AIC) was a respondent to four (4) ongoing matters in the Administrative Appeals Tribunal (AAT), a respondent in one (1) matter before the Federal Circuit Court (FCC), and a respondent in three (3) matters before the Federal Court of Australia (FCA).

The four (4) matters before the federal courts in which the AIC was a respondent are Administrative Decisions (Judicial Review) Act 1977 (ADJR) reviews of decisions to finalise privacy complaints, privacy determinations, Information Commissioner reviews and decisions on FOI requests to the OAIC.

Although the federal courts may award costs, the AIC's exposure to a costs order is unlikely in all matters, based on current legal advice. In any case, it is not possible to estimate the amounts of payment(s) that may be required in relation to matters where a costs order may materialise at the conclusion of the matter.

In relation to the four (4) matters before the Administrative Appeals Tribunal, three (3) are in relation to determinations made by the AIC under section 52 of the Privacy Act 1988 and the other in relation to an FOI request decision by the OAIC. However, as the Tribunal is a 'no costs' jurisdiction consideration of contingent liabilities is not necessary in these matters.

#### Accounting Policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

## 5.2 Financial Instruments

	2018	2017
	\$'000	\$'000

### 5.2A: Categories of Financial Instruments

#### Financial Assets

##### Receivables

Cash on hand and at bank	589	2,711
Trade and other receivables	651	1,031
<b>Total receivables</b>	<b>1,240</b>	<b>2,711</b>
<b>Total financial assets</b>	<b>1,240</b>	<b>3,742</b>

#### Financial Liabilities

##### Other financial liabilities

Trade creditors and accruals	1,174	1,011
<b>Total financial liabilities measured at amortised cost</b>	<b>1,174</b>	<b>1,011</b>
<b>Total financial liabilities<sup>1</sup></b>	<b>1,174</b>	<b>1,011</b>

1 Carrying amount is equal/approximate to fair value.



## Accounting Policy

### *Financial assets*

The OAIC classifies its financial assets in the following categories as receivables.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. Financial assets are recognised and derecognised upon trade date.

### *Effective Interest Method*

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

### *Receivables*

Trade and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'receivables'. Receivables are measured at amortised cost using the effective interest method less impairment.

### *Impairment of Financial Assets*

Financial assets are assessed for impairment at the end of each reporting period.

Financial assets held at cost – if there is objective evidence that an impairment loss has been incurred, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

### *Financial liabilities*

Financial liabilities are classified as other financial liabilities. Financial liabilities are recognised and derecognised upon trade date.

### *Other Financial Liabilities*

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs. These liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective interest basis.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

5.3 Fair Value Measurement

The following tables provide an analysis of assets and liabilities that are measured at fair value.

The different levels of the fair value hierarchy are defined below.

Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities that the entity can access at measurement date.

Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3: Unobservable inputs for the asset or liability.

**Accounting Policy**

The OAIC deems transfers between levels of the fair value hierarchy to have occurred at the end of the reporting period. There were no transfers in or out of any levels during the reporting period.

5.3A: Fair Value Measurement

	2018 \$'000	2017 \$'000	Category (Level 1, 2 or 3)	Valuation Technique(s) and Inputs Used
<b>Non-financial assets<sup>1</sup></b>				
Infrastructure, plant and equipment	977	1,287	2	Market approach. Market replacement cost less estimate of written down value of asset used.

1 There was no non-financial assets where the highest and best use differed from its current use during the reporting period.



# 5

## Part 5

### Appendices

Appendix A: Agency resource statement and resources for outcomes	142
Appendix B: Memoranda of understanding	145
Appendix C: Privacy statistics	148
Appendix D: FOI statistics	152
Appendix E: Acronyms and abbreviations	190
Appendix F: Correction of material errors	193
Appendix G: Index	194
Appendix H	201

## Appendix A: Agency resource statement and resources for outcomes

Table A.1 — Office of the Australian Information Commissioner resource statement 2017–18\*

		Actual available appropriation for 2017–18 \$'000	Payments made 2017–18 \$'000	Balance remaining for 2017–18 \$'000
		(a)	(b)	(a) - (b)
Ordinary Annual Services <sup>1</sup>				
Departmental appropriation		14,794	9,880	4,914
<b>Total</b>		<b>14,794</b>	<b>9,880</b>	<b>4,914</b>
Administered expenses		—	—	
<b>Total ordinary annual services</b>	<b>A</b>	<b>14,794</b>	<b>9,880</b>	
Other services				
Administered expenses		—	—	
Departmental non-operating		—	—	
Administered non-operating		—	—	
<b>Total</b>		<b>—</b>	<b>—</b>	
<b>Total other services</b>	<b>B</b>	<b>—</b>	<b>—</b>	
<b>Total available annual appropriations and payments</b>				
Special appropriations		—	—	
Special appropriations limited by criteria/entitlement		—	—	
<b>Total special appropriations</b>	<b>C</b>	<b>—</b>	<b>—</b>	
Special Accounts		—	—	
<b>Total Special Account</b>	<b>D</b>	<b>N/A</b>	<b>N/A</b>	
Total resourcing and payments A + B + C + D		14,794	9,880	

	Actual available appropriation for 2017–18 \$'000	Payments made 2017–18 \$'000	Balance remaining for 2017–18 \$'000
Less appropriations drawn from annual or special appropriations above and credited to special accounts	N/A	N/A	
And/or payments to corporate entities through annual appropriations	N/A	N/A	
<b>Total net resourcing and payments for the Office of the Australian Information Commissioner</b>	<b>14,794</b>	<b>9,880</b>	

1 Appropriation Act (No.1) 2017–18 and Appropriation Act (No.3) 2017–18. Includes prior year departmental appropriation and section 74 Retained Revenue Receipts.

\* All figures are GST exclusive.

**Table A.2 — Office of the Australian Information Commissioner resource statement 2017–18**

	Budget 2017–18 \$'000	Actual expenses 2017–18 \$'000	Variation 2017–18 \$'000
	(a)	(b)	(a) - (b)
<b>Outcome 1</b>			
<i>Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of information commissioner, freedom of information and privacy functions</i>			
<b>Program 1.1</b>			
Complaint handling, compliance and monitoring, and education and promotion			
Administered expenses	—	—	—
Departmental expenses			
Departmental appropriation <sup>1</sup>	14,607	13,752	855
Special appropriations	—	—	—
Special Accounts	—	—	—
Expenses not requiring appropriation in the Budget year	517	530	(13)
<b>Total for Program 1.1</b>	<b>15,124</b>	<b>14,282</b>	<b>842</b>
Outcome 1 Totals by appropriation type			
Administered Expenses	—	—	—
Departmental expenses			
Departmental appropriation <sup>1</sup>	14,607	13,752	855
Special appropriations	—	—	—
Special Accounts	—	—	—
Expenses not requiring appropriation in the Budget year	517	530	(13)
<b>Total expenses for Outcome 1</b>	<b>15,124</b>	<b>14,282</b>	<b>842</b>
	<b>2017–18</b>	<b>2017–18</b>	
<b>Average Staffing Level (number)</b>	<b>75</b>	<b>75</b>	<b>—</b>

1 Departmental Appropriation combines Ordinary annual services (Appropriation Act Nos. 1 and 3) and Retained Revenue Receipts under section 74 of the PGPA Act 2013.



## Appendix B: Memoranda of understanding

### Australian Bureau of Statistics

This year we continued to provide tailored privacy advice under an MOU with the Australian Bureau of Statistics (ABS).

For this service, we received \$175,000.00 (GST exclusive) from the ABS.

### Australian Digital Health Agency

This year we entered into an MOU with the Australian Digital Health Agency to provide support and assistance on privacy matters relating to both the Healthcare Identifiers Service (HI Service) and My Health Record system.

For the HI Service, these services included:

- Responding to privacy enquiries.
- Conducting a privacy assessment.
- Providing guidance material.
- Monitoring and participating in digital health developments.

For the My Health Record system, these services included:

- Responding to enquiries and complaints relating to the privacy aspects of the My Health Record system.
- Investigating acts and practices that may have been a contravention of the My Health Record system.
- Receiving data breach notifications and provided advice.

- Conducting privacy assessments.
- Providing guidance material for individuals and participants in the My Health Record system.
- Liaising and coordinating on privacy related matters and activities with key stakeholders.
- Preparing relevant communication and media materials.
- Providing policy and legislation advice.
- Monitoring and participating in digital health developments.

For the 2017–18 financial year, the value of the MOU was \$2,076,649.94 (GST exclusive).

For further information on our activities under this MOU, refer to the *Annual Report of the Australian Information Commissioner's activities in relation to digital health 2017–18* (available on the OAIC website no later than 28 November 2018).

## Australian Human Rights Commission

The Australian Human Rights Commission (AHRC) continued to provide a number of corporate services to our office this year. The corporate services included financial, administrative, information technology and human resource related tasks. As a part of this, we also sub-let premises in Sydney from the AHRC.

For the corporate services we paid \$932,206 (GST exclusive), and for the premises (including outgoings) we paid \$1,071,711 (GST exclusive) to the AHRC.

## ACT Government

As a part of our MOU with the ACT Government we continued to provide privacy services to ACT public sector agencies. These services included:

- Handling privacy complaints and enquiries about ACT public sector agencies in relation to the *Information Privacy Act 2014* and its Territory Privacy Principles (TPPs).
- Providing policy and legislation advice.
- Providing advice on data breach notifications, where applicable.
- Carrying out a privacy assessment.
- Providing access to the OAIC's Privacy Professional Network meetings.

For these services, we received \$175,145.78 (GST exclusive) from the ACT Government.

For further information on our activities under this MOU, refer to the *Memorandum of Understanding with the Australian Capital Territory for the provision of privacy services 2017–18 Annual Report* (available on the OAIC website no later than 1 November 2018).

## Department of Education and Training

We continued to support the Department of Education and Training with their Student Identifier initiative, providing expert and timely advice on privacy matters. Our services to the department this year included:

- Developing the content for four editions of the TRANSPARENT privacy newsletter for publication on the Unique Student Identifier website.
- Responding to enquiries and complaints relating to the privacy aspects of the Student Identifier initiative.
- Conducting an online assessment of five Registered Training Organisations against APPs 1 and 5.

For these services, we received \$164,000.00 (GST exclusive).

## Department of Home Affairs

Under our MOU with the Department of Home Affairs we conducted a Passenger Name Record (PNR) data related assessment which considered the use, disclosure and security of personal information in accordance with APPs 6 and 11. The assessment focused on the handling of PNR data in Home Affairs' Connected Information Environment.

For these services, we received \$65,000.00 (including GST).

**Note:** The agreement between Australia and the European Union (EU) on the processing and transfer of Passenger Name Record data states that 'The Australian Customs and Border Protection Service has arrangements in place under the Privacy Act for the Information Commissioner to undertake regular formal audits of all aspects of Australian Customs and Border Protection Service's EU-sourced PNR data use, handling and access policies and procedures'.

## Department of Human Services

As a part of our ongoing work with the Department of Human Services (DHS), we provided them with general privacy services and support. In our work we:

- Provided policy advice to DHS on data-matching and other privacy enquiries.
- Provided policy advice on the operation of the APPs with respect to various DHS activities and proposals.

For these services, we received \$220,000.00 (GST exclusive) from the Department of Human Services.

## Appendix C: Privacy statistics

**Table C.1 — Issues in privacy complaints: APPs**

Issues*	Number of Complaints	%
Use or disclosure	819	27.8
Security of personal information	591	20.1
Access to personal information	497	16.9
Collection	331	11.2
Quality of personal information	276	9.4
Direct marketing	138	4.7
Notification of collection	91	3.1
Openness and transparency	28	1.0
Correction	41	1.4
Cross-border disclosure	10	0.3
Anonymity and pseudonymity	7	0.2
Unsolicited personal information	7	0.2
Government identifiers	3	0.1

\*Each complaint may include more than one issue.

**Table C.2 — The main remedies agreed in conciliated privacy complaints in 2017–18**

Remedy*	Jurisdiction				Total
	Privacy Principles**	Credit reporting	Spent Convictions	My Health Records	
Record amended	164	101	0	0	265
Compensation	174	22	0	0	196
Access provided	181	8	0	0	189
Other or confidential	150	19	2	3	174
Apology	152	5	0	0	157

\*Each complaint resolved may involve more than one remedy type.

\*\*Includes Australian Privacy Principles, National Privacy Principles, Information Privacy Principles and ACT Territory Privacy Principle complaints.

**Table C.3 — Compensation amounts in closed privacy complaints**

Compensation Amounts	Jurisdiction				Total
	Privacy Principles**	Credit reporting	Spent Convictions	TFN	
Up to \$1,000	56	2	0	0	58
\$1,001 to \$5,000	77	13	0	0	90
\$5,001 to \$10,000	21	7	0	0	28
Over \$10,001	20	0	0	0	20

\*\*Includes Australian Privacy Principles, National Privacy Principles and Information Privacy Principles complaints.

## Privacy assessments and digital assessments

**Table C.4 — Privacy assessments**

Privacy assessment subject	No. entities assessed	Year opened	Date closed
1 Department of Home Affairs (previously DIBP) — contractual arrangements	1	2015–16	Aug–17
2 Tax file numbers publishing agencies	7	2016–17	Sept–17
3 iiNet — requests for information by law enforcement agencies — APP 11	1	2016–17	Nov–17
4 ACT Government — Access Canberra	1	2016–17	Dec–17
5 Unique Student Identifier — Registered Training Organisations	5	2017–18	Jan–18
6 Department of Home Affairs (previously DIBP) — third party provider for SmartGate systems	1	2017–18	Apr–18
7 Document Verification Service — gateway service providers	2	2016–17	Mar–18
8 Department of Home Affairs (previously DIBP) — SmartGate APP 12	1	2016–17	May–18
9 Department of Home Affairs (previously DIBP) (third party provider for advance passenger processing)	1	2016–17	Ongoing
10 Loyalty program	2	2016–17	Ongoing
11 Department of Home Affairs (previously DIBP) — passenger name record	1	2016–17	Ongoing
12 Data retention scheme — Telecommunications service provider 1	1	2017–18	Ongoing
13 Data retention scheme — Telecommunications service provider 2	1	2017–18	Ongoing
14 Department of Home Affairs (previously DIBP) — Connected Information Environment	1	2017–18	Ongoing
15 ACT Government — ACT Housing	1	2017–18	Ongoing

Table C.5 — Digital health assessments

Privacy assessment subject	No. entities assessed	Year opened	Date closed
Department of Human Services as a contractor of the My Health Record System Operator	1	2016–17	Nov–17
Handling of Individual Health Identifiers by a private healthcare operator	1	2017–18	Ongoing
Australian Digital Health Agency — handling of personal information	1	2017–18	Ongoing

Table C.6 — Enhanced Welfare Payment Integrity (data matching) assessments

Privacy assessment subject	No. entities assessed	Year opened	Date closed
Department of Human Services non-employment income data matching (NEIDM) program	1	2017–18	Ongoing
Department of Human Services Pay-As-You-Go (PAYG) data matching program	1	2017–18	Ongoing
Department of Human Services information security for the NEIDM and PAYG programs	1	2017–18	Ongoing

## Appendix D: FOI statistics

This section contains information regarding:

- Requests for access to documents
- Applications for amendment of personal records
- Charges
- Disclosure log
- Review of FOI decisions
- Complaints about agency FOI actions
- Impact of FOI on agency resources
- Impact of Information Publication Scheme on agency resources

This appendix has been prepared using data collected from Australian Government agencies and ministers subject to the FOI Act, and separately from the Administrative Appeals Tribunal, the Commonwealth Ombudsman and from the OAIC's own records. Australian Government agencies and ministers are required to provide, among other details, information about:

- The number of FOI requests made to them.
- The number of decisions they made granting, partially granting or refusing access, and the number and outcome of applications for internal review.
- The number and outcome of requests to them to amend personal records.
- Charges collected by them.<sup>1</sup>

The data given by ministers and agencies for the preparation of this appendix is published on [data.gov.au](http://data.gov.au).<sup>2</sup>

### Requests for access to documents

#### Types of FOI requests

The term 'FOI request' means a request for access to documents made under s 15 of the FOI Act. Applications for amendment or annotation of personal records under s 48 are dealt with separately below.

A request for personal information means a request for documents that contain information about a person who can be identified (usually the applicant, although not necessarily). A request for 'other' information means a request for all other documents, such as documents concerning policy development and government decision making.

The FOI Act requires that agencies and ministers provide access to documents in response to requests that meet the requirements of s 15 of the FOI Act. The figures in this report do not take account of applications that did not satisfy those requirements.

1 Australian Government ministers and agencies, and Norfolk Island authorities, are required by s 93 of the FOI Act and reg 8 of the Freedom of Information (Prescribed Authorities, Principal Offices and Annual Report) Regulations 2017 to submit statistical returns to the OAIC every quarter and provide a separate annual report on FOI and IPS costs.

2 The data reported in this appendix has been rounded to two decimal places. In the main body of the annual report it has been rounded to a whole number for increased readability.



### Numbers of FOI requests received

Table D.1 provides a comparison of the number of FOI requests received in each of the past five reporting years including the percentage increase/decrease from the previous year.

**Table D.1 — FOI requests received 2013–14 to 2017–18**

2013–14	2014–15	2015–16	2016–17	2017–18
28,463	35,550	37,996	39,519	34,438
14.11%	24.90%	6.88%	4.01%	–12.86%

FOI request numbers declined by 12.86% in 2017–18; the first year to record a decrease in the total number of FOI requests since 2009–10 (the financial year immediately prior to the 2010 FOI Act reforms).

In 2017–18, 28,199 (or 81.88% of all FOI requests) were for documents containing personal information. This is the same proportion as in 2016–17 (81.94%), but a decrease when compared with 2015–16 (86.55%).

Similarly, in 2017–18, 6,239 (or 18.12% of all FOI requests) were for ‘other’ information. This is the same proportion as in 2016–17 (18.06%), but an increase in the proportion when compared with 2015–16 (13.45%).

The decline in total FOI requests in 2017–18 was principally driven by the significant decreases in the number of FOI requests for personal information received by the Department of Home Affairs<sup>3</sup> (4,145 fewer) and the Department of Human Services (1,156 fewer) and FOI requests for other information received by the Northern Australian Infrastructure Facility (1,355 fewer).

The general decrease in requests for personal information can be largely attributed to an increased emphasis by agencies on providing access to personal information administratively, outside the FOI Act. The Department of Home Affairs attributes their 23.42% decline in the number of FOI requests for personal information in 2017–18 to the introduction in 2016–17 of an administrative access scheme for certain personal information requests, coming after several years of very large increases in FOI requests for personal information by visa applicants.

The Northern Australian Infrastructure Facility was created on 1 July 2016. In 2016–17, as the result of a public campaign which encouraged members of the public to make FOI requests to the facility, it received 1,367 FOI requests, most of which were made within a two week period in May 2017. In 2017–18, the facility only received 12 FOI requests.

<sup>3</sup> As a result of an Administrative Arrangements Order dated 20 December 2017, the Department of Immigration and Border Protection changed its name to the Department of Home Affairs. This report refers to the Department of Home Affairs. The reported data includes data reported by the (former) Department of Immigration and Border Protection during the first six months of 2017–18.

Despite the overall decrease in FOI requests in 2017–18, some agencies reported receiving significantly more FOI requests than in previous years. As a result the National Disability Insurance Agency, Comcare and IP Australia entered the ‘top 20’ agency FOI requests list this year.

### **Number of FOI requests received by agency/minister**

In 2017–18, the Department of Home Affairs, the Department of Human Services and the Department of Veterans’ Affairs together continued to receive the majority of FOI requests (68.75% of the total). Nearly all of those requests (96%) are from individuals seeking access to personal information.

The 20 agencies that received the largest number of requests in 2017–18 are shown in Table 9.2, with a comparison to the number of requests each received in 2016–17.

As noted above, the Department of Home Affairs received significantly fewer FOI requests in 2017–18, and its proportion of the total number of requests received by all Australian Government agencies declined from 46.10% in 2016–17 to 41.17% in 2017–18. This included a 23.42% decrease in requests for personal information (from 17,702 in 2016–17 to 13,557 in 2017–18). However the Department of Home Affairs experienced a 16.77% increase in ‘other’ (non-personal) requests.

The Department of Human Services received 1,219 fewer requests in 2017–18 (down 16.35% from 2016–17). However, the Department of Veterans’ Affairs received more – 3,261

requests, 5.36% more than in 2016–17. The Administrative Appeals Tribunal experienced a 6.78% decrease in requests. The Australian Taxation Office received 1,254 requests, which was 12.57% more than in 2016–17.

As noted above, the total number of requests received by Australian Government agencies decreased by 12.86% in 2017–18. However among the 20 agencies that received the most FOI requests (90.47% of all FOI requests in total), 16 agencies recorded increases in the number of requests received. In particular, the Australian Transaction Reports and Analysis Centre and the National Disability Insurance Agency experienced very significant increases (150.60% and 284.71% respectively). Other agencies to experience significant increases in request numbers include Comcare (68.89%), the Department of Prime Minister and Cabinet (39.39%), the Immigration Assessment Authority (33.33%), the Department of Defence (28.39%), the Department of Jobs and Small Business<sup>4</sup> (26.59%), the Department of Foreign Affairs and Trade (21.62%) and IP Australia (18.75%).

Because of substantial increases in request numbers, some agencies reported engaging contracted service providers to assist with FOI request processing to meet demand.

Three agencies that appeared in last year’s top 20 agencies experienced decreases in the numbers of FOI requests in 2017–18 and no longer appear in the top 20: the Department of Treasury (a 32.14% decrease), the Department of Social Services (29.94% fewer requests) and the Department of Finance (a 7.55% reduction).

<sup>4</sup> The Department of Jobs and Small Business was created as a result of an Administrative Arrangements Order dated 20 December 2017. This department incorporates the former Department of Employment with small business policy and programs, and reducing the burden of government regulation into its responsibilities. This appendix refers to the Department of Jobs and Small Business throughout and includes FOI data reported by the (former) Department of Employment during the first six months of 2017–18.

Table D.2 — Agencies by numbers of FOI requests received

AGENCY	2016–17					2017–18					Change in Total
	Rank	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other	Total	% of all FOI requests	
Department of Home Affairs <sup>#</sup>	1	17,702	516	18,218	46.10	1	13,557	620	14,177	41.17	-4,041
Department of Human Services	2	7,164	293	7,457	18.87	2	6,008	230	6,238	18.11	-1,219
Department of Veterans' Affairs	3	3,067	28	3,095	7.83	3	3,199	62	3,261	9.47	166
Administrative Appeals Tribunal	4	1,547	17	1,564	3.96	4	1,445	13	1,458	4.23	-106
Australian Taxation Office	6	599	515	1,114	2.82	5	1,445	13	1,254	3.64	140
Australian Federal Police	7	438	201	639	1.62	6	473	209	682	1.98	43
Immigration Assessment Authority	8	402	0	402	1.02	7	536	0	536	1.56	134
Department of Defence	9	151	233	384	0.97	8	185	308	493	1.43	109
Australian Transaction Reports and Analysis Centre (AUSTRAC)	19	119	47	166	0.42	9	248	168	416	1.21	250

AGENCY	2016–17				2017–18				Change in Total		
	Rank	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other		Total	% of all FOI requests
Department of Health	10	333	337	337	0.85	10	2	374	376	1.09	39
National Disability Insurance Agency*	–	40	45	–	–	11	270	57	327	0.95	242
Department of the Prime Minister and Cabinet	14	1	197	198	0.50	12	5	271	276	0.80	78
Department of Foreign Affairs and Trade	12	76	146	222	0.56	13	97	173	270	0.78	48
Comcare*	–	86	49	–	–	14	155	73	228	0.66	93
Department of Jobs and Small Business#	16	66	173	173	0.44	15	114	105	219	0.64	46
Australian Securities and Investments Commission	15	69	125	194	0.49	16	77	141	218	0.63	24
Commonwealth Ombudsman	17	158	13	171	0.43	17	165	25	190	0.55	19
Attorney-General's Department	13	51	164	215	0.54	18	50	135	185	0.54	–30
Department of Education and Training*	–	16	141	–	–	19	55	127	182	0.53	25

AGENCY	2016-17					2017-18					Change in Total
	Rank	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other	Total	% of all FOI requests	
IP Australia**	-	0	144	-		20	0	171	171	0.50	27
Total top 20	-	31,736^	4,730^	36,466^	92.27	-	27,503	3,654	31,157	90.47	-5,309
Remaining agencies	-	647	2,406	3,053	7.73	-	696	2,585	3,281	9.53	228
<b>Total</b>	<b>-</b>	<b>32,383</b>	<b>7,136</b>	<b>39,519</b>	<b>100.0</b>	<b>-</b>	<b>28,199</b>	<b>6,239</b>	<b>34,438</b>	<b>100.0</b>	<b>-5,081</b>

\* Denotes an agency not in the top 20 agencies in 2017-18.

+ In 2017-18, for the purpose of FOI statistical reporting, the OAC created a new agency on the FOI statistics database, 'IP Australia'. This new agency incorporates data from the Designs, Patents, Trade Marks and Plant Breeder's Rights offices which are all within the corporate entity 'IP Australia'. The data given for 2017-18 therefore reflects data which has been reported separately by each of these entities in previous years.

# Denotes an agency whose name and/or functions changed as a result of the Administrative Arrangements Order issued on 20 December 2017. The Department of Home Affairs was formerly the Department of Immigration and Border Protection, and the Department of Jobs and Small Business was formerly the Department of Employment.

^ Shows the total for the top 20 agencies in 2016-17 (i.e., includes figures for three agencies not in the top 20 agency list in 2017-18).

### FOI requests finalised

Agencies and ministers commenced 2017–18 with a significant number of on hand FOI requests requiring decision (42.89% more than in 2016–17). However the combination of a reduction in the number of requests received during the year (12.86% less) and an increase in requests withdrawn by applicants (32.39% more) resulted in the number of requests on hand at the end of the year being 47.23% less than at the end of 2016–17.

Reasons for the higher number of requests being withdrawn during the year may include:

- Increased use of administrative access schemes to provide access to documents outside the FOI Act.
- Documents are already available on agency disclosure logs.
- Information is published on agency IPS entries and in annual reports.
- Applicants accept verbal assurances that no documents exist within the scope of their request and withdraw.
- Requests being sent to the wrong agency in the first instance which are then withdrawn when sent to the correct agency.<sup>5</sup>

Although there has been an overall decline in the number of FOI requests transferred from one agency or minister to another in 2017–18 (6.92% less), 50.33% of all transfers were made by two agencies: the Administrative Appeals Tribunal and the Immigration Assessment Authority. Both bodies review certain administrative decisions of agencies and ministers. Applicants for review of decisions by these two agencies frequently seek to access documents held by the agency or minister that made the reviewable decision. As a result, these requests are transferred to the relevant agency or minister for processing.

It is worth noting that although only 18.12% of all FOI requests are requests for access to non-personal ('other') information, this category of request was withdrawn 30.77% more often than personal requests in 2017–18.

<sup>5</sup> Although an agency or minister can transfer a wrongly directed FOI request under s 16(1) of the FOI Act, this can only be done with the agreement of the receiving agency. If the applicant makes the request directly to the agency, it must be processed.

**Table D.3 — Overview of FOI requests received and finalised compared to last year**

FOI request processing	2016–17	2017–18	% +/-
On hand at the beginning of the year	5,395	6,279	42.89%
Received during the year	39,519	34,438	–12.86%
Requiring decision <sup>6</sup>	44,914	40,717	–9.34%
Withdrawn	3,844	5,089	32.39%
Transferred	763	641	–15.99%
Decided <sup>7</sup>	34,029	31,674	–6.92%
Finalised <sup>8</sup>	38,636	37,404	–3.19%
On hand at the end of the year	6,278	3,313	–47.23%

The percentage of requests granted in full decreased from 55.47% of all requests in 2016–17, to 49.81% in 2017–18. While the number of requests granted in part remained steady at 34%, the number of requests refused (which includes requests refused because the documents sought do not exist or cannot be found and practical refusals, as well as when exemptions have been applied) increased from 9.95% in 2016–17 to 16.19% this year.

A reason for the significant increase in the number of FOI requests being refused in 2017–18, is accounted for by the Northern Australian Infrastructure Facility refusing 1,332 requests under s 24 of the FOI Act (practical refusal). These requests to the agency were received over a two week period in 2016–17, following a public campaign which included a specific online FOI request form. However, it is worth noting that even if the Northern Australian Infrastructure Facility had not made those decisions there would still have been an increase in the proportion of decisions refused in 2017–18 (11.99%).

<sup>6</sup> Total of requests on hand at the beginning of the year and requests received during the year.  
<sup>7</sup> Covers access granted in full, part or refused.  
<sup>8</sup> The sum of requests withdrawn, transferred and decided.

Table D.4 — Outcomes of FOI requests decided compared with last year

Decision	Personal 2016-17	Other 2016-17	Total 2016-17	%	Personal 2017-18	Other 2017-18	Total 2017-18	%
Granted in full <sup>9</sup>	18,040	837	18,877	55.47	14,889	889	15,778	49.81
Granted in part <sup>10</sup>	10,180	1,587	11,767	34.58	9,037	1,730	10,767	34.00
Refused	1,899	1,486	3,385	9.95	2,042	3,087	5,129	16.19
<b>Total</b>	<b>30,119</b>	<b>3,910</b>	<b>34,029</b>	<b>100</b>	<b>25,968</b>	<b>5,706</b>	<b>31,674</b>	<b>100</b>

9 The release of all documents within the scope of the request, as interpreted by the agency or minister.

10 A document is granted in part when a part, or parts, of a document have been redacted to remove exempt or conditionally exempt matter.



Table D.5 lists the top 20 agencies by the number of FOI decisions they made. The Attorney-General's Department and the Department of Education and Training are on the list of the top 20 agencies in terms of requests received, but not in the top 20 of decisions made.<sup>11</sup> In contrast, the Civil Aviation Safety Authority and the Northern Australian Infrastructure Facility feature in the top 20 by decisions made, but not by requests received.

There are differences in the outcome of FOI requests between those agencies processing the largest number of requests in 2017–18. Thirteen of these agencies refused access to documents at levels higher than the average across all Australian Government agencies (16.19%). As a rule, these agencies process proportionally higher numbers of 'other' (non-personal) FOI requests. Agencies processing higher proportions of FOI requests for personal information have lower refusal rates (see for example, the Department of Home Affairs, the Department of Human Services, the Department of Veterans' Affairs and the Administrative Appeals Tribunal).

11 The Attorney-General's Department finalised 57.30% of all the requests it received in 2017–18 (it received 185 FOI requests and finalised 106). The Department of Education and Training finalised 54.96% (182 requests received, 100 finalised).

Table D.5 — Top 20 agencies by numbers of FOI requests decided

Agency	Granted in full	%	Granted in part	%	Refused	%	Total
Department of Home Affairs	8,464	55.61	5,786	38.02	970	6.37	15,220
Department of Human Services	2,047	46.41	1,746	39.58	618	14.01	4,411
Department of Veterans' Affairs	2,872	97.13	43	1.45	42	1.42	2,957
Northern Australian Infrastructure Facility	1	0.07	7	0.52	1,332	99.40	1,340
Administrative Appeals Tribunal	774	75.73	216	21.14	32	3.13	1,022
Australian Taxation Office	146	16.06	552	60.73	211	23.21	909
Australian Federal Police	38	6.61	346	60.17	191	33.22	575
Immigration Assessment Authority	347	83.41	63	15.14	6	1.44	416
Australian Transaction Reports and Analysis Centre (AUSTRAC)	144	37.31	108	27.98	134	34.72	386
Department of Defence	65	17.71	210	57.22	92	25.07	367
Department of Health	56	21.14	74	31.90	102	43.97	232
National Disability Insurance Agency	68	31.63	121	56.28	26	12.09	215
Comcare	58	29.74	69	35.38	68	34.87	195
Australian Securities and Investments Commission	29	15.51	63	33.69	95	50.80	187

Agency	Granted in full	%	Granted in part	%	Refused	%	Total
Department of Prime Minister and Cabinet	34	18.89	58	32.22	88	48.89	180
Commonwealth Ombudsman	35	21.08	91	54.82	40	24.10	166
IP Australia	27	16.36	135	81.82	3	1.82	165
Department of Foreign Affairs and Trade	16	10.60	76	50.33	59	39.07	151
Department of Jobs and Small Business	58	41.73	51	36.69	30	21.58	139
Civil Aviation Safety Authority	42	31.11	62	45.93	31	22.96	135
<b>Top 20</b>	<b>15,321</b>	<b>52.17</b>	<b>9,877</b>	<b>33.63</b>	<b>4,170</b>	<b>14.20</b>	<b>29,368</b>
Remaining agencies	457	19.82	890	38.6	959	41.59	2,306
<b>Total</b>	<b>15,777</b>	<b>49.81</b>	<b>10,767</b>	<b>33.99</b>	<b>5,129</b>	<b>16.19</b>	<b>31,674</b>

### Use of exemptions

Table D.6 shows how Australian Government agencies and ministers claimed exemptions under the FOI Act when processing FOI requests in 2017–18. More than one exemption may be applied in processing an FOI request.

The personal privacy exemption in s 47F of the FOI Act remains the most claimed exemption. It was applied in 42.68% of FOI requests to which an exemption was applied in 2017–18 (less than in 2016–17 when it was claimed in 47.90% of all matters in which an exemption applied). The next most claimed exemptions were s 47E (certain operations of agencies — 19.75%, up from 18.47% in 2016–17), s 37 (documents affecting enforcement of law and protection of public

safety — 9.17%, up from 2016–17 when it was 6.60% of all exemptions applied), s 38 (documents to which secrecy provisions of enactments apply — 6.64% slightly up on 2016–17's 6.16%) and s 47C (deliberative processes — 5.20% compared with 4.78% in 2016–17).

No agency reported applying s 45A (Parliamentary Budget Office documents) or s 47J (The economy) in 2017–18 (s 45A was applied in three requests in 2016–17). Less reliance was placed on s 45 (material obtained in confidence) in 2017–18 (when it comprised 1.55% of all exemptions applied) than in 2016–17 (2.17%) however s 47B (Commonwealth-State relations) was applied more frequently than in 2016–17 (165 times compared to 122).

**Table D.6 — Use of exemptions in FOI decisions**

FOI Act reference	Exemption	Personal	Other	Total	% of all exemptions applied
s 33	Documents affecting national security, defence or international relations	545	154	699	4.93
s 34	Cabinet documents	0	68	68	0.48
s 37	Documents affecting enforcement of law and protection of public safety	1,113	186	1,299	9.17
s 38	Documents to which secrecy provisions of enactments apply	752	189	941	6.64
s 42	Documents subject to legal professional privilege	239	123	362	2.56
s 45	Documents containing material obtained in confidence	92	127	219	1.55

FOI Act reference	Exemption	Personal	Other	Total	% of all exemptions applied
s 45A	Parliamentary Budget Office documents	0	0	0	0
s 46	Documents disclosure of which would be contempt of Parliament or contempt of court	14	20	34	0.21
s 47	Documents disclosing trade secrets or commercially valuable information	22	110	132	0.93
s 47A	Electoral rolls and related documents	3	3	6	0.04
s 47B	Commonwealth-State relations	92	73	165	1.16
s 47C	Deliberative processes	401	335	736	5.20
s 47D	Financial or property interests of the Commonwealth	75	21	96	0.68
s 47E	Certain operations of agencies	2,214	583	2,797	19.75
s 47F	Personal privacy	5,114	932	6,045	42.68
s 47G	Business	188	374	562	3.97
s 47H	Research	0	4	4	0.03
s 47J	The economy	0	0	0	0

### Use of practical refusal

Section 24AB of the FOI Act sets out that a ‘request consultation process’ must be undertaken if a ‘practical refusal reason’ exists (s 24AA). A practical refusal reason exists if the work involved in processing the FOI request would substantially and unreasonably divert the agency’s resources from its other operations, or the FOI request does not adequately identify the documents sought.

The request consultation process involves the agency sending a written notice to the FOI applicant advising them that the agency intends to refuse the request and providing details of how the FOI applicant can consult the agency. The FOI Act imposes an obligation on the agency to take reasonable steps to help the FOI applicant revise their request so that the practical refusal reason no longer exists.

Table D.7 provides information about how Australian Government agencies and ministers engaged in request consultation processes under s 24AB of the FOI Act in 2017–18 and the outcome of those processes.

**Table D.7 — Use of practical refusal**

Practical refusal processing step	Personal	Other	Total	% <sup>12</sup>
Notified in writing of intention to refuse request	1,960	2,168	4,128	–
Request was subsequently refused or withdrawn	1,554	1,924	3,478	84.25
Request was subsequently processed	406	244	650	15.75

Agencies sent 163.28% more notices of an intention to refuse a request in 2017–18 than in 2016–17 (which was a year in which there had been a 15.66% increase over the previous year).

In 2017–18, 84.25% of the FOI requests subject to a notice of intention to refuse were subsequently refused or withdrawn: the proportion was 66% in 2016–17 and 70.3% in 2015–16.

In 2017–18, 20.71% of personal FOI requests for which a notice of an intention to refuse for a practical refusal reason were subsequently processed. This is a decline on 2016–17, when 32.85% of personal FOI requests were subsequently processed. Requests for ‘other’ (non-personal) information were more likely to be refused in 2017–18 following the issuing of a notice of an intention to refuse a request for a practical refusal reason. In 2017–18, only 11.26% of such requests were subsequently processed (in 2016–17, 35.38% were subsequently processed).

However, as noted in previous sections, the Northern Australian Infrastructure Facility refused 1,332 FOI requests in 2017–18 under the practical refusal provisions. This large number of refusals increased both the number of notices issued and the number of requests subsequently refused or withdrawn in 2017–18. However if these decisions are disregarded as anomalous, there was still a 78.22% increase in the number of notices issued in 2017–18 by other agencies (2,791) when compared to 2016–17 (1,566).

Further, the proportion of requests subsequently processed following a notice of intention to refuse being issued has decreased to 15.75% in 2017–18 (from 34% in 2016–17). This may indicate that the assistance agencies gives applicants during the request consultation process is not sufficient to enable applicants to refine their request to remove the practical refusal reason, or that applicants are not willing to refine their request so that they can be processed.

<sup>12</sup> Percentage of the total number of notices advising of an intention to refuse a request for a practical refusal reason.

If the data relating to the Northern Australian Infrastructure Facility is disregarded, most of the increase in practical refusal processing in 2017–18 can be attributed to two agencies: the Department of Home Affairs and the Department of Human Services. In the previous reporting period, the Department of Home Affairs and the Department of Human Services respectively issued 590 and 255 notices of an intention to refuse a request. Those figures rose to respectively 1,042 and 987 in 2017–18, a 76.61% increase for the Department of Home Affairs and 287.06% for the Department of Human Services. Together they issued almost half (49.19%) of all practical refusal notices issued in 2017–18.

In 2017–18, 84.86% of all FOI requests determined were processed within the applicable statutory time period: 84.53% of all personal information requests and 86.35% of non-personal requests. This represents a significant improvement in response time from 2016–17 (when 57.62% were decided within time).

### Time taken to respond to FOI requests

Agencies and ministers have 30 days within which to make a decision under the FOI Act. The FOI Act allows for the statutory timeframe to be extended in certain circumstances.<sup>13</sup>

If a decision is not made on an FOI request within the statutory timeframe (including any extension period) then s 15AC of the FOI Act provides that a decision refusing access is deemed to have been made. Nonetheless, agencies can and are encouraged to continue to process a request that has been deemed to have been refused.

<sup>13</sup> An agency may extend the period of time to make a decision by agreement with the applicant (s 15AA), or to undertake consultation with a third party (ss 15(6)–(8)). An agency can also apply to the Information Commissioner for more time to process a request when the request is complex or voluminous (s 15AB), or when access has been deemed to be refused (s 15AC or section 51DA) or deemed affirmed on internal review (s 54D). These extension provisions acknowledge that there are circumstances when it is appropriate for an agency to take more than 30 days to process a request. When an agency has obtained an extension of time to deal with an FOI request, and resolves the request within the extended time period, the request is recorded as having been determined within the statutory time period.

Table D.8 — FOI request response time compared with last year

Response time	Personal 2016-17	Other 2016-17	Total	%	Personal 2017-18	Other 2017-18	Total	%
Within applicable statutory time period	16,343	3,264	19,607	57.62	21,952	4,927	26,879	84.86
Up to 30 days over applicable statutory time period	3,475	325	3,800	11.17	1,018	363	1,381	4.36
31-60 days over applicable statutory time period	2,746	83	2,829	8.31	472	172	644	2.03
61-90 days over applicable statutory time period	2,549	46	2,595	7.63	574	96	670	2.12
More than 90 days over applicable statutory time period	5,006	192	5,198	15.28	1,952	148	2,100	6.63
Total	30,119	3,910	34,029	100.01	25,968	5,706	31,674	100.00



Table D.9 shows those agencies and ministers that in 2017–18 had one or more FOI requests that took more than 90 days beyond the applicable statutory time period to finalise.

While the Department of Home Affairs' compliance with statutory timeframes was 74.88%, a reduction in the number of requests received and improved procedures has resulted in a significant improvement in the department's timeliness in 2017–18 compared to 2016–17 when it finalised only 25.22% within the statutory time period.

Five agencies/ministers took longer than 90 days after the applicable statutory period had expired to process more than 10% of their FOI requests; the Department of Home Affairs, the Prime Minister, the Treasurer, the Minister for Justice, and the Australian Film, Television and Radio School.

A further six agencies/ministers took more than 90 days after expiry of the applicable statutory period to process more than 5% of their FOI requests.

A significant number of the FOI requests finalised more than 90 days after the expiry of the applicable statutory period were requests for access to personal information (1,952 requests, or 92.95% of the total requests finalised more than 90 days after the statutory period had expired). Such lengthy delays in providing access to personal information may have significant impacts on the rights and opportunities of the relevant individuals. The OAIC will work with the relevant agencies and ministers' offices to improve timeliness in 2018–19.

**Table D.9 — Response times greater than 90 days after the expiry of the applicable statutory period 2017–18**

Agency	Total requests decided	Requests decided more than 90 days after statutory period	% of agency/ minister total
Department of Home Affairs	15,220	1,990	12.48
Australian Federal Police	575	57	9.91
Department of Prime Minister and Cabinet	180	17	9.44
Department of the Treasury	76	7	8.21
Administrative Appeals Tribunal	1,022	4	0.39
Department of Industry, Innovation and Science	52	4	7.69
Australian Securities and Investments Commission	909	4	0.44
Australian Broadcasting Corporation	38	3	7.89
Prime Minister	8	3	37.5
Department of Human Services	4,411	2	0.06
Minister for Justice	2	1	50
Australian Film, Television and Radio School	4	1	25
Treasurer	8	1	12.5
Australian Criminal Intelligence Commission	65	1	1.54

## Applications for amendment of personal records

Section 48 of the FOI Act confers a right on a person to apply to an agency or to a minister to amend a document, to which lawful access has been granted, when the document contains personal information about the applicant:

- That is incomplete, incorrect, out of date or misleading; and
- That has been used, is being used, or is available for use by the agency or minister for an administrative purpose.

In 2017–18, 510 amendment applications were received by 14 agencies (none were received by ministers). This is a 53.64% decrease in applications from 2016–17 (when 1,100 applications were received). This decrease is entirely attributable to a significant (56.75%) decrease in the number of amendment applications received by the Department of Home Affairs (1,052 in 2016–17 and 455 in 2017–18).

The Department of Home Affairs advises that the reason for the decrease in applications in 2017–18 is that it has focussed on responding administratively, outside the FOI Act, to applicants seeking to amend their personal records. This includes introducing an online portal to streamline the process for applicants and has resulted in a reduction in the number of amendment applications in 2017–18.

Despite experiencing a large decrease in applications, the Department of Home Affairs still accounted for 89.22% of all amendment applications received during the year (in 2016–17 the Department of Home Affairs accounted for 95.64% of all amendment applications).<sup>14</sup>

543 amendment applications were decided in 2017–18. This is 581 less than in 2016–17 when 1,124 applications were decided (a 51.69% decline). This reflects the decrease in the number of applications received during the reporting period.

Table D.10 compares the decision making for amendment applications with last year. In 2017–18, a decision was made to amend or annotate a person's personal record in 72.28% of the decided applications, an increase on the proportion granted in 2016–17 (67.97%). As noted above, overall trends in decision making with respect to amendment applications are largely determined by decisions made by the Department of Home Affairs (which granted 75.46% of applications in 2017–18 and 68.78% in 2016–17).

<sup>14</sup> The other agencies to receive amendment applications in 2017–18, are the Department of Human Services (14), the Department of Jobs and Small Business (13), the Department of Defence (10), Comcare (5), the Department of Veterans' Affairs (3), the Administrative Appeals Tribunal (2), the Australian Taxation Office (2), the Australian Federal Police (1), the Australian Financial Security Authority (1), the Civil Aviation Safety Authority (1), the Department of the Environment and Energy (1), the Fair Work Commission (1) and the National Disability Insurance Agency (1).

**Table D.10 — Decisions on amendment applications**

Decision	2016–17	%	2017–18	%
Requests granted: amend record	625	55.6	314	57.83
Requests granted: annotate record	136	12.1	70	12.89
Requests granted: amend and annotate record	3	0.3	2	0.37
Requests refused	360	32.0	157	28.91
<b>Total decided</b>	<b>1,124</b>	<b>100</b>	<b>543</b>	<b>100</b>

### Time taken to respond to amendment applications

An agency is required to notify an applicant of a decision on their application to amend personal records as soon as practicable, but in any case not later than 30 days after the date the request is received, or a longer period as extended under the FOI Act.

In 2017–18, 85.82% of all amendment applications were decided within the applicable statutory time period. This is a slight decrease in timeliness from 2016–17 (86.55%). The OAIC will work with the relevant agencies and ministers' offices to improve timeliness in 2018–19.

## Charges

Section 29 of the FOI Act provides that an agency or minister may impose charges in respect of FOI requests, except requests for personal information, and sets out the process by which charges are assessed, notified and adjusted.

Table D.11 shows the amounts collected by the 20 agencies that collected the most in charges under the FOI Act in 2017–18. These

top 20 agencies collected 82.55% of all charges collected by Australian Government agencies and ministers.

In 2017–18, agencies notified a total of \$383,531 in charges, with respect to 1,029 FOI requests, but collected only \$115,863 (30.21% of the total notified). This difference is due to agencies exercising their discretion under s 29 of the FOI Act not to impose the whole charge, or applicants withdrawing their FOI request and not paying the notified charge.

Agencies notified and collected significantly less in charges in 2017–18 than in the previous year. In 2016–17, agencies notified a total of \$505,394 in charges with respect to 1,317 requests, and collected \$147,043 (29.09% of the total notified). The percentage decrease in the notification and collection amounts for 2017–18 when compared with 2016–17 are 24.11% and 21.21% respectively.

**Table D.11 — Top 20 agencies by charges collected**

Agency	Requests received	Requests where charges notified	Total charges notified	Total charges collected
Department of Health	376	138	\$53,925	\$16,693
Department of Education and Training	182	60	\$13,096	\$7,405
Australian Taxation Office	1254	16	\$11,212	\$6,782
Department of Finance	147	22	\$12,869	\$5,284
Department of Defence	493	77	\$28,985	\$4,874
Department of Foreign Affairs and Trade	270	46	\$10,723	\$4,861
Civil Aviation Safety Authority	139	35	\$6,431	\$4,634
IP Australia	171	29	\$11,767	\$4,520
Department of Industry, Innovation and Science	86	10	\$7,179	\$4,401
Department of Human Services	6,238	80	\$18,282	\$4,374
Food Standards Australia New Zealand	4	2	\$5,670	\$4,162
Australian Competition and Consumer Commission	61	35	\$17,941	\$3,970
Australian Communications and Media Authority	13	4	\$3,780	\$3,780
Department of Prime Minister and Cabinet	276	47	\$14,060	\$3,169
Department of Jobs and Small Business	219	33	\$15,419	\$3,122
Australian Securities and Investments Commission	218	19	\$3,888	\$3,077
Australian National University	64	12	\$8,492	\$2,947
Bureau of Meteorology	25	11	\$14,658	\$2,673

Agency	Requests received	Requests where charges notified	Total charges notified	Total charges collected
Department of Communications and the Arts	54	15	\$8,840	\$2,577
Department of Infrastructure, Regional Development and Cities	100	9	\$3,268	\$2,341
<b>Top 20</b>	<b>10,390</b>	<b>700</b>	<b>\$270,485</b>	<b>\$95,646</b>
Remaining agencies	24,048	329	\$113,046	\$20,217
<b>Total</b>	<b>34,438</b>	<b>1029</b>	<b>\$383,531</b>	<b>\$115,863</b>

## Disclosure log

All Australian Government agencies and ministers subject to the FOI Act are required to maintain an FOI disclosure log on a website. The disclosure log lists information that has been released to FOI applicants, subject to some exceptions (such as personal or business information). Information about agency and ministerial compliance with disclosure log requirements has been collected since 2012–13.

A total of 108 agencies and ministers reported information about their disclosure log activity in 2017–18. Collectively, they reported 1,104 new entries on disclosure logs during 2017–18; including documents available for download directly from the agency or minister's website in relation to 624 requests, documents available from another website in relation to 70 requests, and 410 entries in which the documents are available by another means (usually upon request).

The total number of new entries published on disclosure logs in 2017–18 is 15.24% higher than 2016–17, when 958 entries were added. This increase occurs in the context of a 13% decrease in the number of full or partial access grant decisions made in 2017–18. This reflects a greater understanding by agencies of their obligation to publish documents released in response to FOI requests.

However, since 2015–16 the proportion of documents which members of the public can access directly from agency websites has declined from 66.87% to 56.52%. As explained in the FOI Guidelines, publication of documents directly through the disclosure log, rather than providing a description of the documents and how they can be obtained on request from the agency or minister, is consistent with the FOI Act object of facilitating public access to government information.<sup>15</sup> In 2018–19, the OAIC intends revising Part 14 of the FOI Guidelines (Disclosure Log) to emphasise the benefit to the community, and to

<sup>15</sup> FOI Guidelines [14.32].

agencies, of making documents released in response to FOI requests readily available on agency websites.

In 2017–18, agencies and ministers reported a total of 37,994 unique visits to disclosure logs and 55,257 page views, which represents an 18.42% increase in unique visits but a 7.50% decrease in total page views reported in 2016–17. This appears to indicate that members of the public are increasingly accessing specific documents, rather than browsing disclosure logs to discover content. This may be the result of the increasing use of search engines to find relevant documents.

## Review of FOI decisions

Under the FOI Act, an applicant who is dissatisfied with the decision of a minister or an agency on their initial FOI request has several avenues of review. The applicant can seek internal review with the agency or minister or external merits review by the Information Commissioner (IC review). Information Commissioner decisions under section 55K are reviewable by the Administrative Appeals Tribunal (AAT), then AAT decisions may be appealed on a question of law, to the Federal Court. In addition, an applicant may make a complaint at any time to the Information Commissioner about an agency's actions under the FOI Act, or alternatively has the ability make a complaint to the Commonwealth Ombudsman.

Third parties who have been consulted in the FOI process also have review rights if an agency or minister decides to release documents contrary to their submissions. Consultation requirements apply for state governments (s 26A), commercial organisations (s 27) and private individuals (s 27A).

### Internal review

Although there is no requirement to do so, the Information Commissioner recommends that a person apply for internal review by the agency who made the FOI request before applying for IC review.

In 2017–18, 797 applications were made for internal review of FOI decisions: 12.41% more than in 2016–17 (709). This increase is notable because it occurs in the context of a 12.86% (4,081) decline in overall FOI request numbers in 2017–18.

Of the 797 applications for internal review, 463 (58.09%) were for review of decisions made in response to requests for personal information and 334 (41.91%) were for review of decisions on other (non-personal) requests.

Agencies finalised 733 decisions on internal review in 2017–18: 11.23% more than in 2016–17 (659). Of these, 351 (47.89%) affirmed the original decision, 72 (9.82%) set aside the original decision and granted access in full, 217 (29.60%) granted access in part, nine (1.23%) granted access in another form, 14 (1.91%) resulted in lesser access and applicants withdrew 52 applications (7.09%) without concession by the agency. Agencies reduced the charges levied as a result of internal review in 18 cases (2.46%).

There were 10 applications for internal review of decisions on amendment applications, 60% fewer than in 2016–17 (when there were 25 applications). Agencies made nine internal review decisions on amendment applications: in seven (77.78%) the original decision was affirmed and in two (22.22%) it was set aside. In 2016–17, 70.83% of original decisions were affirmed and 29.17% set aside.

### Information Commissioner review

Table D.12 provides a breakdown by agency and minister of IC review applications received in 2017–18, where the agency or minister was the subject of more than one IC review. In total, there were 801 applications for IC review (up 27%).

In general, it is expected that the agencies which receive the most FOI requests will have the most IC review applications lodged against their decisions. In 2017–18, 14 of the agencies most appealed against also appear in the list of top 20 agencies in terms of the number of FOI requests received.

However some agencies which do not receive large numbers of FOI requests are the subject of a comparatively large number of IC review applications given their FOI caseload. In 2017–18, these agencies included the Office of the Registrar of Indigenous Corporations (eight IC review applications, 23 FOI requests received – 34.78% of all requests), the Australian Sports Anti-Doping Authority (39 requests, 11 IC review applications – 28.21%), the Australian Broadcasting Corporation (41 requests, 10 IC reviews – 24.39%), the Department of Communications and the Arts (54 requests, 10 IC reviews – 18.52%) and the Department of the Prime Minister and Cabinet (276 requests, 28 IC reviews – 10.15%). The FOI case load of these agencies is characterised by a large proportion of non-personal requests (four of the listed agencies received only non-personal FOI requests in 2017–18).



Table D.12 — Information Commissioner review – top 20 by review applications received

Agency/minister	FOI requests received	Access refusal decisions	Access grant decisions	Total IC reviews	Percentage of FOI requests
Department of Home Affairs	14,177	154	0	154	1.09
Department of Human Services	6,238	119	0	119	1.91
Australian Federal Police	682	52	2	54	7.92
Department of Defence	493	36	3	39	7.91
Australian Taxation Office	1,254	28	0	28	2.23
Department of Prime Minister and Cabinet	276	28	0	28	10.15
Department of Foreign Affairs and Trade	270	26	0	26	9.63
Department of Health	376	19	0	19	5.05
Department of Veterans' Affairs	3,261	18	0	18	0.55
Australian Securities and Investments Commission	218	14	3	17	7.80
Attorney-General's Department	185	17	0	17	9.19
National Disability Insurance Agency	327	15	0	15	4.59
Australian Sports Anti-Doping Authority	39	11	0	11	28.21
Comcare	228	11	0	11	4.82
Commonwealth Ombudsman	190	10	0	10	5.26

Agency/minister	FOI requests received	Access refusal decisions	Access grant decisions	Total IC reviews	Percentage of FOI requests
Department of Communications and the Arts	54	10	0	10	18.52
Australian Broadcasting Corporation	41	10	0	10	24.39
Civil Aviation Safety Authority	139	6	2	8	5.76
Office of the Registrar of Indigenous Corporations	23	8	0	8	34.78
Department of the Environment and Energy	123	7	0	7	5.69
Australian Criminal Intelligence Commission	77	7	0	7	9.09
<b>Subtotal</b>	<b>28,671</b>	<b>606</b>	<b>10</b>	<b>616</b>	<b>2.15</b>
Remaining agencies/ministers	5,767	180	5	185	3.20
<b>Total</b>	<b>34,438</b>	<b>786</b>	<b>15</b>	<b>801</b>	<b>2.33</b>

There was an 18.45% increase in the number of IC reviews finalised by the OAIC in 2017–18 when compared with 2016–17 (515 in 2016–17 and 610 in 2017–18).

In 2017–18, 487 IC reviews were finalised without a formal decision being made under section 55K of the FOI Act (79.84% of all IC reviews finalised during the year). This is a very similar percentage as in 2016–17 (79.81%).

The number of IC review applications declined under section 54W<sup>16</sup> of the FOI Act decreased as a percentage of the total IC reviews finalised in 2017–18. In 2016–17, 141 applications (or 27.38% of the total applications finalised) were declined under section 54W; in 2017–18, this decreased to 26.89% of the total applications finalised (164 in total).

Of the 164 IC review applications declined under section 54W of the FOI Act in 2017–18, 48.17% were declined under section 54W(a)(i) on the basis that the Information Commissioner was satisfied that the IC review application was frivolous, vexatious, misconceived, lacking in substance, or not made in good faith. Of all applications declined under section 54W, 35.98% were declined under section 54W(a)(ii) (failure to cooperate), 6.10% under section 54W(a)(iii) (lost contact) and 9.76% under section 54W(c) (failure to comply).

In 2017–18, the Information Commissioner<sup>17</sup> made 123 decisions under section 55K of the FOI Act, a 20.59% increase on 2016–17 when 102 formal decisions under section 55K were made. Of the 123 decisions, 68 affirmed the decision under review (55.28%), 45 set aside the reviewable decision (36.59%) and 10 decisions were varied (8.13%). In 2016–17, the Information Commissioner affirmed 61.76% of decisions, set aside 22.55% and varied 15.69%.

Of the 68 decisions affirmed by the Information Commissioner, nine (13%) had been revised by the agency or minister under section 55G of the FOI Act during the IC review, giving greater access to the documents sought. In 18% of the decisions set aside and substituted by the Information Commissioner (eight decisions), the agency had withdrawn certain exemption contentions during the course of the IC review.

The percentage of applications received by the OAIC which were out of jurisdiction or invalid increased from 6.60% of all applications in 2016–17, to 13.28% in 2017–18.

<sup>16</sup> Section 54W of the FOI Act contains a number of grounds under which the Information Commissioner may decide not to undertake an IC review, or not to continue to undertake an IC review.

<sup>17</sup> Includes the then acting Information Commissioner.

**Table D.13 — Information Commissioner review outcomes compared to 2016–17**

Information Commissioner decisions	2016–17	2017–18	% of 2017–18 total
Section 54N – out of jurisdiction or invalid	34	81	13.28
Section 54R – withdrawn	115	131	21.48
Section 54R – withdrawn/conciliated	93	64	10.49
Section 54W(a) – deemed acceptance of PV/appraisal	0	0	0.0
Section 54W(a)(i) – frivolous, vexatious, misconceived, lacking in substance, or not in good faith	66	79	12.95
Section 54W(a)(ii) – failure to cooperate	56	59	9.67
Section 54W(a)(iii) – lost contact	3	10	1.64
Section 54W(b) – refer AAT	15	16	2.62
Section 54W(c) – failure to comply	1	0	0.0
Section 55F – set aside by agreement	7	15	2.46
Section 55F – varied by agreement	5	27	4.43
Section 55F – affirmed by agreement	2	0	0.0
Section 55G – substituted	16	5	0.82
Section 55K – affirmed by IC	63	68	11.15
Section 55K – set aside by IC	23	45	7.38
Section 55K – varied by IC	16	10	1.64
<b>Total</b>	<b>515</b>	<b>610</b>	<b>100.01<sup>18</sup></b>

**Administrative Appeals Tribunal review**

An application can be made to the Administrative Appeals Tribunal (AAT) for review of the following FOI decisions:

- A decision of the Information Commissioner on an IC review.
- An IC reviewable decision (that is, an original decision or an internal review decision), but only if the Information Commissioner decides, under s 54W(b), that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

<sup>18</sup> This total reflects rounding to two decimal places.

In 2017–18, 30 applications for review of FOI decisions were made to the AAT. This is a 23.08% decrease on the 39 applications made in 2016–17.

Table D.14 provides a breakdown by agency of applications to the AAT in FOI matters in 2017–18. This data has been provided by the AAT.

In 2017–18, three agencies sought review in the AAT of decisions made by the Australian Information Commissioner under s 55K of the FOI Act – the Department of Home Affairs (three applications), the Department of Defence and the Department of Prime Minister and Cabinet (one application each).

**Table D.14 — AAT review by agency (respondent)**

Respondent	Applications
Department of Human Services	6
Department of Defence	2
Australian Building and Construction	2
Australian Securities and Investments Commission	2
Civil Aviation Safety Authority	2
Commonwealth Ombudsman	2
Australian Federal Police	1
Australian Sports Anti-Doping Authority	1
Commissioner of Taxation	1
Commonwealth Scientific and Industrial Research Organisation	1
Department of Health	1
Department of Home Affairs	1
Department of Social Services	1
Department of Veterans’ Affairs	1
National Offshore Petroleum Safety and Environmental Management Authority	1
Other (appeals by agencies against IC review decisions)	5
<b>Total</b>	<b>30</b>

Thirteen applications remain outstanding with the AAT at the end of 2017–18.

Table D.15 shows the outcome of the 33 FOI reviews finalised by the AAT in 2017–18. This data has been provided by the AAT.

**Table D.15 — Outcomes of FOI reviews finalised by the AAT in 2017–18**

AAT Outcomes	Number 2016–17	% of total 2016–17	Number 2017–18	% of total 2017–18
Affirmed by consent	0	–	1	3.03
Varied/set aside/remitted by consent	4	11.76	5	15.15
Dismissed by consent	1	2.94	2	6.06
Withdrawn by applicant	13	38.24	10	30.30
Decision affirmed	8	23.53	5	15.15
Decision varied/set aside	7	20.59	7	21.21
Dismissed by AAT – frivolous or vexatious/fail to comply with direction	1	2.94	2	6.06
Dismissed – no application fee paid	0	–	1	3.03
<b>Total</b>	<b>34</b>	<b>100</b>	<b>33</b>	<b>99.99<sup>18</sup></b>

Of the 33 FOI reviews finalised by the AAT, 12 (36.36%) resulted in a published decision in 2017–18.

The AAT affirmed the agency's decision in five (15.15%) of the 33 AAT reviews, compared with eight (23.53%) in 2016–17.

Of the 33 FOI reviews finalised in 2017–18, 10 were applications made by Australian Government agencies following decisions made by the Information Commissioner under s 55K of the FOI Act. Of these 10 reviews, four applications were set aside (by decision), three applications were withdrawn by the agency and three were set aside by consent.

### Federal Court

In 2017–18 the Information Commissioner referred a linked set of two questions of law to the Federal Court under s 55H of the FOI Act. In its application, the Information Commissioner sought to clarify the proper construction of s 55G of the FOI Act during the course of an IC review. On 9 April 2018, the Federal Court (Griffiths J) held that the determination of the referred questions of law did not involve a 'matter' within the meaning of Chapter III of the Australian Constitution and therefore dismissed the Information Commissioner's application (see *Australian Information Commissioner v Elstone Pty Limited* [2018] FCA 463).

<sup>19</sup> This total reflects rounding to two decimal places.

Also during 2017–18 a Full Court considered an appeal against a decision by Tracey J (*Giddings v Australian Information Commissioner* [2017] FCA 667), which remitted an application for IC review to the Information Commissioner to be heard and determined according to law. The Court dismissed the application on 21 December 2017 (see *Giddings v Australian Information Commissioner* [2017] FCAFC 225).

## Complaints about agency FOI actions

### Complaints to the Information Commissioner

Information about the Information Commissioner's handling of FOI complaints is provided on page 83.

### Complaints to the Commonwealth Ombudsman

Complaints about an agency's handling of FOI requests are primarily dealt with by the OAIC. The Commonwealth Ombudsman may investigate complaints related to administration of FOI matters when it would be more appropriate or effective, for example, when the FOI complaint is one part of a wider grievance about an agency's actions.

In 2017–18, the Commonwealth Ombudsman received 49 complaints about FOI matters, 15.52% less than the 58 complaints it received in 2016–17. The Commonwealth Ombudsman transferred 30 complaints to the OAIC under s 6C of the Ombudsman Act 1976 during 2017–18.

## Impact of FOI on agency resources

To assess the impact on agency resources of their compliance with the FOI Act, agencies are asked to estimate the hours that staff spent on FOI matters and the non-labour costs directly attributable to FOI, such as legal and specific FOI training costs. Agencies submit these estimates annually. Agency estimates may also include FOI processing work undertaken on behalf of a minister's office.

Agencies are also asked to report their costs of compliance with the Information Publication Scheme (IPS). To facilitate comparison with the information in previous annual reports, IPS costs are not included in this analysis of the cost of agency compliance with the FOI Act, but are discussed separately below.

The total reported cost attributable to processing FOI requests in 2017–18 was \$52.19 million, a 16.52% increase on the previous year's total of \$44.79 million. This increase occurred in the context of 12.86% fewer FOI requests being received and a 6.92% decrease in the number of FOI requests determined in 2017–18.

The reason for the increase in overall cost of FOI activity is a 26.99% increase in the average amount of time taken to process each FOI request (from 2.26 days in 2016–17 to 2.87 days 2017–18). More information about staff time spent processing FOI requests is set out below.

Table D.16 sets out the average cost per FOI request determined (granted in full, in part or refused) compared to last year. The average cost per request determined in 2017–18 was \$1,648 (up 25.23% from 2016–17).

**Table D.16 — Average cost per request determined 2015–16 to 2017–18**

Year	Requests determined	Total cost	Average cost per request determined
2016–17	34,029	\$44,787,154	\$1,316
2017–18	31,674	\$52,186,179	\$1,648

### Staff costs

All agencies are asked to supply information about staff resources allocated to FOI.

**Table D.17 — Total FOI staffing across all Australian Government agencies compared to last year**

Staffing	2016–17	2017–18	+/- %
Total staff hours	670,986	744,350	10.93
Total staff years	335.5	372.18	10.93

Agencies provided estimates of the number of staff hours spent on FOI to enable calculation of salary costs (and 60% related costs) directly attributable to FOI request processing. A summary of staff costs is provided in Table D.18, based on information provided by agencies and ministers and is calculated using the following median base annual salaries from APSC public information:<sup>20</sup>

- FOI contact officer (officers whose duties included FOI work) \$76,561.<sup>21</sup>

- Other officers involved in processing requests:
  - Senior Executive Service (SES) officers (or equivalent) \$189,353.<sup>22</sup>
  - APS Level 6 and Executive Levels (EL) 1–2 \$111,633.<sup>23</sup>
  - Australian Public Service (APS) Levels 1–5 \$ 61,970.<sup>24</sup>
- Minister's office
  - Minister and advisers \$138,195.<sup>25</sup>
  - Minister's support staff \$ 61,970.<sup>26</sup>

20 As salary levels differ between agencies, median salary levels were used. These are given by the Australian Public Service Commission in its APS Remuneration Report 2017. These median levels are as at 31 December 2017.

21 APS Level 5 base salary median.

22 SES Band 1 base salary median.

23 Executive Level 1 base salary median.

24 APS Level 3 base salary median.

25 Executive Level 2 base salary median.

26 APS Level 3 salary median.



**Table D.18 — Estimated staff costs of FOI compared to last year**

Type of staff	Staff years 2016–17	Total staff costs 2016–17	Staff years 2017–18	Total staff costs 2017–18	+/- % Total staff costs
FOI contact officers	258.63	30,808,955	277.32	33,971,341	10.26
SES	9.23	2,727,886	13.53	4,097,902	50.22
APS Level 6 and EL 1–2	26.82	4,669,263	42.38	7,569,521	62.11
APS Levels 1–5	38.45	3,874,513	36.97	3,665,451	–5.40
Minister and advisers	1.10	238,518	1.05	231,062	–3.13
Minister’s support staff	1.25	122,827	0.93	92,608	32.63
<b>Total</b>	<b>335.49</b>	<b>42,351,963</b>	<b>372.18</b>	<b>49,627,885</b>	<b>17.18</b>

Total estimated staff costs in 2017–18 were \$49.63 million, 17.18% more than in 2016–17. By contrast, in 2016–17, total estimated staff costs rose by 9.12% over the previous year.

## Non-labour costs

Non-labour costs directly attributable to FOI are summarised in Table D.19, including the percentage change from the previous year. The total in 2017–18 was \$2.56 million, a 5.06% increase on the previous year.

The largest increase in non-labour costs in 2017–18 is in relation to the 'other' category of expenses and is primarily the result

of the Australian Federal Police and the Department of Home Affairs both reporting that they contracted service providers to assist with FOI processing during 2017–18 (\$153,827 and \$140,152 respectively).

There was also a 32.35% increase in costs associated with FOI training in 2017–18. This increase is the result of many agencies needing to engage new staff to process an increasing FOI workload.

**Table D.19 — Identified non-labour costs of FOI**

Costs	2016–17	2017–18	% change
General legal advice costs	1,268,462	1,234,631	-2.67
Litigation costs	635,240	426,145	-32.92
Total legal costs	1,903,702	1,660,776	-12.76
General administrative costs	237,932	274,532	15.38
Training	244,765	323,958	32.35
Other	48,792	299,029	512.86
<b>Total</b>	<b>2,435,191</b>	<b>2,558,295</b>	<b>5.06</b>

### Average cost per FOI request

The average staff days per request in 2017–18 differed significantly across agencies from 0.019 (Airservices Australia) to 19.21 days (the Department of Defence). The overall average was 2.88 days. The average was 2.26 days in 2016–17.

The average cost per request also differed significantly across agencies from \$12.83 to \$18,095.92. The overall average was \$1,515.37, a 33.71% increase on the previous year's average of \$1,133.31.

Table D.20 — Agencies with average cost per request greater than \$10,000

Agency	Requests received	Average cost per request
Northern Australian Infrastructure Facility	12	\$18,095.92
Australian Centre for International Agricultural Research	3	\$12,259.32
Department of Defence	493	\$11,756.98

The Department of Defence has a high average cost per request. This is because it has the highest average staff days per request and its overall costs were higher than other agencies because of costs associated with training staff in 2017–18 (\$113,766).

As noted earlier, the Northern Australian Infrastructure Facility finalised 1,340 FOI requests in 2017–18, but received only 12 requests during the year. No other agency experienced such a large difference in request numbers between 2016–17 and 2017–18. If the facility’s total FOI spend is divided by the number of FOI requests it finalised, the average cost per request in 2017–18 would only be \$162.05.

## Impact of the Information Publication Scheme on agency resources

Agencies are required to provide information about the costs of meeting their obligations under the IPS, which commenced on 1 May 2011.

The total reported cost attributable to compliance with the IPS in 2017–18 was \$964,637, 126.99% more than in 2017–16 (\$424,966). This increase may be largely attributable to the OAIC conducting a

survey of agencies' IPS compliance. The final report on IPS compliance is expected to be published in the first half of 2018–19.

### Staff costs

Table D.21 shows the total reported IPS staffing across Australian Government agencies compared to last year.

**Table D.21 — Total IPS staffing**

Staffing	2016–17	2017–18	% change
Staff numbers: 75–100% time on IPS matters	9	7	–22.22
Staff numbers: less than 75% time on IPS matters	280	418	49.29
Total staff hours	6705	15,087	125.01
Total staff years	3.35	7.54	125.01

**Table D.22 — Estimated staff costs in relation to the IPS for 2017–18**

Type of staff <sup>26</sup>	Staff years	Salary costs	Related costs (60%)	Total staff costs
IPS contact officers	6.7655	517,973.45	310,784.06	828,757.51
SES	0.089	16,852.42	10,111.45	26,963.87
APS Level 6 and EL 1–2	0.381	42,532.17	25,519.31	68,051.48
APS Levels 1–5	0.308	19,086.76	11,452.06	30,538.82
<b>Total</b>	<b>7.5435</b>	<b>596,444.80</b>	<b>357,866.88</b>	<b>954,311.68</b>

<sup>27</sup> IPS contact officers are officers whose usual duties include IPS work. The other rows cover other officers involved in IPS work.

**Non-labour costs**

Reported IPS non-labour costs for all agencies totalled only \$10,326 in 2017–18 and this was largely the result of one agency (the Australian Radiation Protection and Nuclear Safety Agency) engaging an external auditor to audit their IPS.

## Appendix E: Acronyms and abbreviations

Acronym or abbreviation	Expanded term
AAT	Administrative Appeals Tribunal
AHRC	Australian Human Rights Commission
AIC Act	<i>Australian Information Commission Act 2010</i>
ANAO	Australian National Audit Office
APEC	Asia-Pacific Economic Cooperation
APP	Australian Privacy Principle
APPA	Asia Pacific Privacy Authorities
APS	Australian Public Service
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
CALC	Consumer Action Law Centre
CASA	Civil Aviation Safety Authority
CCLCSA	Consumer Credit Law Centre South Australia
CCR	Comprehensive Credit Reporting
CII	Commissioner initiated investigation
CIO	Credit and Investments Ombudsman
CPN	Consumer Privacy Network
DBN	Data Breach Notification
DHS	Department of Human Services
DIBP	Department of Immigration and Border Protection (now known as the Department of Human Services)
DVS	Document Verification Service
EDR	External dispute resolution
EWOQ	Energy + Water Ombudsman Queensland
EWON	Energy & Water Ombudsman NSW
EWOSA	Energy & Water Ombudsman SA

Acronym or abbreviation	Expanded term
EWOV	Energy and Water Ombudsman Victoria
EWOWA	Energy and Water Ombudsman Western Australia
FOS	Financial Ombudsman Service
FOI	Freedom of information
FOI Act	<i>Freedom of Information Act 1982</i>
FTE	Full-time equivalent
GDPR	General Data Protection Regulation
GPEN	Global Privacy Enforcement Network
GST	Goods and Services Tax
HI Services	Healthcare Identifiers Services
IC	Information Commissioner
Information Commissioner	Australian Information Commissioner, within the meaning of the <i>Australian Information Commissioner Act 2010</i> .
IPP	Information Privacy Principle
IPS	Information Publication Scheme
MOU	Memorandum of Understanding
MYEFO	Mid-Year Economic and Fiscal Outlook
My Health Records Act	<i>My Health Records Act 2012</i>
NDB	Notifiable Data Breaches
NMAS	National Mediator Accreditation Standards
NPP	National Privacy Principle
OAIC	Office of the Australian Information Commissioner
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PPN	Privacy Professionals' Network
Privacy Act	<i>Privacy Act 1988</i>
PAW	Privacy Awareness Week
PIA	Privacy Impact Assessment

Acronym or abbreviation	Expanded term
PSM	Public Service Medal
PTO	Public Transport Ombudsman Victoria
SES	Senior Executive Service
SI	Student Identifier
SME	Small and Medium Enterprises
TAP	Talking about performance
TCO	Tolling Customer Ombudsman
TFN	Tax File Number
TIA Act	<i>Telecommunications (Interception and Access) Act 1979</i>
TIO	Telecommunications Industry Ombudsman
TPPs	Territory Privacy Principles
WHS	Workplace Health and Safety



## Appendix F: Correction of material errors

Correction of errors in the *Office of the Australian Information Commissioner Annual Report 2016–17*.

### **Page 18 — Privacy highlights number received**

For 2016–17 the number of privacy complaints received should be 2,495, not 2,494.

### **Page 21 — FOI highlights number received**

For 2016–17 the number of IC reviews received should be 633, not 632.

### **Page 28 — Under the list of CPN members**

The year that CPN members joined should be 2016–17 not 2017–18.

## Appendix G: Index

### A

- accountability and management, 91–101
- acronyms and abbreviations, 190–192
- Administrative Appeals Tribunal (AAT), 76, 135, 152, 154, 158, 161
  - vexatious applicant declarations, 85
- Advanced Passenger Processing (AdPP)
  - data, 66
- advertising and market research, 100
- agencies, *see* government agencies
- agency resource statement, 142–3
- agreement, 55–6, 77, 83, 98, 147
- Annual Report 2015–16 correction of
  - material errors, 193
- Annual Report of the Australian Information Commissioner's activities in relation to digital health 2017–18*, 69, 145
- APPA, 21
- Asia-Pacific Economic Cooperation (APEC), 20
- Asia Pacific Privacy Authorities (APPA), 21–22, 27
- assessments, *see* privacy assessments
- Assistant Commissioners, 92
- Audit Committee, 93
- Australian Border Force Act 1995*, 80
- Australian Broadcasting Corporation, 176
- Australian Bureau of Statistics, 145
- Australian Capital Territory (ACT)
  - Government, 48, 52, 68
- Australian Community Attitudes to Privacy Survey (ACAPS), 33, 36
- Australian Digital Health Agency, 145
- Australian Government, *see*
  - government agencies
- Australian Human Rights Commission (AHRC), 93, 146
- Australian Information Access
  - Commissioners, 20, 46, 87
- Australian Information Commissioner,
  - see* Commissioner
- Australian Information Commissioner Act 2010* (AIC Act), 6, 88, 92, 115
- Australian National Audit Office (Auditor-General), 104–5
- Australian Privacy Principles (APPs), 38, 47–8
- assessments, 64–67, 150–1
  - case study, 48, 49, 65
  - code, 28, 38, 52, 71
  - complaints, 52
  - complaints issues, 53
  - data-matching, 69
  - determinations, 58–9, 72
  - issues regarding privacy enquiries, 50
  - memoranda of understanding, 146–7
  - statistics, 148
- Australian Public Service (APS) Privacy Governance Code, 27
- Australian Red Cross, 31, 62
- Australian Retail Credit Association, 33, 39, 57, 72
- awareness and understanding, 36, 46

### B

- border clearance processes, 66

### C

- case study, 48–9, 54–7, 62–3, 65, 70, 78–82
- Cbus, 58
- 'certain operations of agencies' exemption, 164
- Charges, 77, 89, 172–5
- Civil Aviation Safety Authority (CASA), 78
- Comcare, 154
- Commissioner, 6, 16–7, 22, 26, 38–9, 40, 45–6, 57, 68–9, 71, 73, 86–8, 92–3

determinations, 58–9, 72,  
remuneration, 98

Commissioner initiated investigations (CIIs),  
10, 17, 27, 31, 44, 58, 61

Commissioner's review, 8–11

Commonwealth Disability Strategy, 101

Commonwealth Ombudsman, 76, 152, 175,  
183

communication and collaboration, 18–23  
*see also* awareness and understanding

complaint handling, 32–3, 44, 57, 144,

complaints, 10  
*see also* Australian Privacy Principles;  
Freedom of Information;  
government agencies;  
privacy complaints;  
sectors, complaints about;  
timeliness in FOI matters;  
timeliness in privacy matters

compliance with Privacy Act, 28

comprehensive credit reporting, 10, 29

conciliation, 32, 54–5, 97

Conifer, Dan, 82

connected information environment (CIE)  
project, 66

consultants, 99

Consultation Forum, 98

Consumer Data Right, 10, 29, 69

Consumer Privacy Network (CPN), 19

contracts, 98–100, 116

corporate governance, 92–3

corporate services, 93, 146

costs, 89, 110, 119, 126, 135, 137, 152, 187  
Information Publication Scheme, 188

*Counter-Terrorism Legislation Amendment  
(Foreign Fighters) Act 2014*, 66–7

credit reporting bodies, 12, 54,

Credit Reporting Code, 10, 27, 29, 39, 72

culturally and linguistically diverse (CALD)  
communities, 35, 46

## D

Data Availability and Use report, 11

data breach notifications, 9, 21, 29, 30, 51, 59  
voluntary, 9, 60

data-matching, 27, 51–2, 68–70, 81, 147, 151

*Data matching Program (Assistance and Tax)  
Act 1990* (Data matching Act), 68

Data Retention Scheme, 65, 150

Department of Education and Training, 67,  
MOU, 146, 161

Department of Employment, 154, 157

Department of Finance, 99

Department of Health, 31, 63, 156, 162, 173,  
177, 181

Department of Home Affairs, 38, 58–9, 64,  
66–7, 72, 80, 88–9, 147, 150, 153–5, 157,  
161–2, 167, 169–171, 177, 181, 186

Department of Human Services (DHS), 58,  
67–9, 81, 88, 153–5, 161, 167

MOU, 147

Department of Immigration and Border  
Protection (DIBP),  
*See* Department of Home Affairs

Department of the Prime Minister and  
Cabinet, 38, 72, 154, 176, 181

Department of the Treasury, 70, 82, 99

Department of Veterans' Affairs, 58, 67–8,  
88, 154, 161, 171

Deputy Commissioner, 17, 92, 98

determinations, 35, 38, 41, 58–9, 72, 98

digital health, 17,  
assessments, 27, 69  
data breach notifications, 60  
Memorandum of Understanding, 145

direct marketing, 70

disability reporting, 101

disclosure log, 89, 152, 158, 174–5

Dispute Resolution branch, 17, 98

Diversity Committee, 98

Document Verification Service (DVS), 64

**E**

educational materials, 28  
 Elstone Pty Limited, 78  
 Employee assistance program, 97  
 employees, 95, 98,  
     *see also* staff  
 email newsletters, 35, 45, 86  
 employment statistics, 96  
 e-newsletters, 35, 41, 45, 87  
 enforceable undertakings, 31, 61  
 Enhanced Welfare Payment Integrity, 27, 68  
 enquiries, 10, 17, 19  
     Freedom of Information, 45, 76  
     media; privacy, 23, 36  
     media; FOI, 74  
     privacy, 35, 36, 48–51, 145–7  
 Enterprise Agreement, 98  
 environment (ecologically sustainable  
     development), 101  
 environment (operational), 135  
*Environment Protection and Biodiversity  
 Conservation Act 1999*, 101  
 Ethnic Communities' Councils of Australia, 35  
 European Union (EU) General Data  
     Protection Regulation (GDPR), 9, 20–1,  
     52, 71, 73  
 events, 18, 20–21, 32–3, 35, 37, 41, 57, 74, 86  
     Privacy Awareness Week, 22  
 Executive, 17, 20, 31, 92–3, 96, 98  
 exemption, 58, 69, 78, 89, 159, 164–5, 179  
 extensions of time FOI notifications and  
     requests, 83–4  
 External Dispute Resolution schemes, 53,  
     57, 70  
 external networks, 19–20

**F**

Facebook, 21, 23, 61, 64  
 Farrell, Paul, 80  
 female staff, 96  
 finance, 92–3  
     amounts paid and received under  
     MOUs, 145–7  
     remuneration, 98  
 finance sector, 54  
 Financial statements, 102–139  
 fraud control, 100  
 freedom of information  
*see also* information access rights;  
     Information Commissioner reviews;  
     regulatory action policy  
     agency resources, 86  
     awareness, 86–9  
     extensions of time, 83  
     networks, 18, 20, 45, 86  
     processing statistics, 89  
     public information service, 45  
     vexatious applicant declarations, 85  
 freedom of information complaint/s, 44, 78,  
     83, 86, 152, 175, 183  
     material error, 193  
 freedom of information decisions, review  
     of, 175  
 freedom of information disclosure log, 89,  
     158, 174  
 freedom of information enquiries, 10, 76,  
 Freedom of information performance, 76–89  
 Freedom of information Performance  
     Measures, 40–6  
 full-time equivalent staff, 95–6  
 full-time staff, 96

**G**

Gateway Service Providers, 64, 150  
 gender of staff, 96  
 Global Privacy Enforcement Network (GPEN), 19  
 government agencies (Australian Government)  
   assessments, 66–71  
   data-matching, 68–9  
   freedom of information costs to;  
     charges, 89, 172–4, 183–7  
     privacy, 06, 14, 28–9, 38, 47–8, 59–60, 64,  
     privacy complaints, 12, 52–3  
 grant programs, 100  
 guidelines, FOI Act, 40, 42–4, 82–3, 86, 88,  
   94, 174  
 Guidelines on data-matching in Australian  
   Government Administration, 68

**H**

health service providers, 12, 54  
   *see also* digital health  
 Healthcare Identifiers Service (HI Service),  
   145  
 Hong Kong, 21  
 ‘How do I make a privacy complaint?’  
   webpage, 33  
 human resources, 95–8  
*see also* staff

**I**

identity verification, 64  
 iiNet, 34, 65  
 Immigration Assessment Authority, 154–5,  
   158, 162  
 in person enquiries, 10, 13, 15  
 Indigenous staff, 96  
 information access rights, 7, 9, 11, 17, 20, 27,  
   45–6, 87–8

Information Commissioner reviews (IC  
   reviews), 10, 14, 17, 27, 42–4, 76–83, 135,  
   175–183  
   material error, 193  
 Information Contact Officer Network (ICON),  
   18, 41, 45, 86  
*Information Privacy Act 2014*, 48, 52, 146  
 Information Publication Scheme, 10, 40, 76,  
   87, 100–101, 152, 158, 183  
   costs, 188–9  
 International Conference of Data Protection  
   and Privacy Commissioners, 29  
 International Conference of Information  
   Commissioners, 20–1  
 International Right to Know Day,  
   *see* Right to Know Day  
 Israel, 21

**L**

learning and development, 97  
*Legislation Act 2003*, 71  
 legislative instrument, 10, 38–9, 71–2  
 loyalty programs, 64

**M**

male staff, 96  
 management and accountability, 90–101  
 Manchester, England, 21  
 mandatory data breach notifications,  
 My Health Record notifications, 60, 71  
   *see* Notifiable Data Breaches scheme  
 media and media coverage, 21–3, 31, 35–6,  
   45–6, 57, 74–5, 87, 145  
   FOI, 74  
   privacy, 23, 36  
   Privacy Awareness Week, 22  
 Medicare, 63, 70, 134  
 Medicare Benefits Schedule, 63  
 memoranda of understanding, 48, 52, 66,  
   68, 93, 100, 145, 146–7

Minister or ministers, 40, 42, 59, 76–7, 82–4,  
86, 88, 92, 133–4, 152, 154, 158, 164,  
166–7, 169–172, 174–9, 183–5  
*My Health Records Act 2012*, 60, 69, 71  
MyHealth Record System Operator, 151

## N

National Disability Strategy, 101  
networks, 18–20  
non-English speaking backgrounds, people  
from, 96, 98  
see also culturally and linguistically  
diverse (CALD) communities  
non-salary benefits, 97  
*Norfolk Island Legislation Amendment Act  
2015*, 82  
Northern Australian Infrastructure Facility,  
153  
Notifiable Data Breaches (NDB) Scheme, 9,  
13, 59–60, 73–4  
event, 21  
advice for businesses and agencies,  
69–71  
awareness campaign, 23  
enquiries, 48, 51  
performance regarding, 27–30  
webinar, 23, 37

## O

OIACnet eNewsletters, 35, 41, 45  
Ombudsman, 57, 76, 152, 156, 163, 175, 177,  
181, 183  
online privacy, 36  
Open Banking, 70  
Open Government Forum, 11  
Open Government National Action Plan, 11  
operational environment, 135  
Optus, 34, 65

## P

presentation, see speaking engagement  
or speech  
part-time staff, 96  
Passenger Name Record data, 147  
performance, 26–89  
Performance Management and  
Development Scheme, 97  
performance pay, 98  
performance statement, 26–46  
personal information,  
privacy by design approach, 10  
FOI requests for, 152–7  
personal privacy exemption, 89, 164  
Pharmaceutical Benefits Schedule (PBS), 63  
phone enquiries, 10, 13, 15, 48, 50–1, 76  
portfolio structure, 92  
practical refusal of FOI requests, 89, 158,  
165–7  
Pricewaterhouse Coopers (PWC), 39, 72  
Prime Minister,  
former, Kevin Rudd, 79  
then, Malcolm Turnbull, 79  
Privacy as a career event, 21, 37  
privacy assessments, 27–8, 33–4, 64–69  
digital health, 27, 69, 145, 151  
Privacy Authorities Australia, 19  
Privacy Awareness Week, 22, 29, 32, 35, 37,  
57, 73, 75  
Privacy resources, 71  
Privacy (Credit Reporting) Code 2014, 10, 27,  
29, 39, 73  
privacy complaints, 10, 17, 32–3, 36, 48,  
52–59, 146, 148–9  
early resolution, 27, 32, 55–7  
dispute resolution, 16, 42, 53, 57, 70  
performance, 27–39  
material error, 193  
privacy enquiries, 48–51  
timeliness, 35  
privacy impact assessment s, 72

Privacy Performance, 47–75  
 Privacy Performance Measures, 28–39  
 Privacy Professionals' Network (PPN),  
     19–20, 22, 34  
 privacy public information service, 35  
 Privacy (Tax File Number) Rule 2015, 67  
 procurement, 99  
*Public Governance, Performance and  
 Accountability Act (PGPA Act) 2013*, 26, 92,  
     104, 106, 115  
 Public Interest Determinations, 38, 72  
*Public Service Act 1999*, 59, 98  
 Purpose, 7

## Q

quality of privacy complaint resolution, 32  
 Queensland University of Technology, 21, 37

## R

Regional Processing Centres, 66  
 regulatory action policy  
     freedom of information, 10, 27, 42, 44, 82,  
       88, 94  
     privacy, 32, 34  
     remuneration, 98  
 resources, 10, 20, 22, 27, 28, 30, 35, 40, 46,  
     59, 71, 86  
     Work, Health and Safety, 98  
     Australian Government, 99  
 review of FOI decisions, 175–6  
     *see also* Information  
     Commissioner reviews  
 Right to Know Day, 27, 45, 46, 86–7  
 risk management, 92–3

## S

San Francisco, United States, 21  
 sectors  
     assessments, 64  
     complaints about, 12, 54  
     data breach notifications, 30  
     events, 20, 22  
 Senate Community Affairs Legislation  
     Committee, 81  
 Senior Executive Service (SES) officers, 98,  
     104  
 small business, 99  
 SmartGates, 66–7  
 social media, 23, 95  
     complaints handling function coverage,  
       57  
     Freedom of Information, 45  
     information access, 46  
     privacy, 35–6, 57, 74  
 speaking engagements, 33, 74  
 speech or speeches, 22, 31, 20  
 staff, 9, 11, 17, 31, 45, 93, 95–8  
     fraud, 100  
 staff costs of FOI processing, 183–7  
 staff costs of IPS, 188  
 staff training, learning and development,  
     32, 35, 43, 117, 144  
     conciliation training, 55  
 staff time spent on FOI matters, 46  
 staff turnover, 35, 45  
 stakeholders, 11, 41, 57, 86, 145  
 statutory data-matching, 68  
 statutory office holder, 6, 16, 96, 98  
 structure, 16–7  
     *see also* portfolio structure  
*Student Identifiers Act 2014*, 67  
 submissions, 17, 42, 44, 70, 79, 82, 175  
 Sydney Disability Expo, 21, 33, 35, 45, 57

## T

tax file numbers, 31, 52, 67–8, 150  
 Taylor, Josh, 79  
 telecommunications, 12, 54, 57, 64, 65, 70, 117, 150  
*Telecommunications (Interception and Access) Act 1979*, 65  
 telephone enquiries, 10, 13, 15, 48, 50–1, 76  
 Telstra, 34, 65  
 tenders and contracts, 39, 99–100  
 Territory Privacy Principles, 48, 51–2, 146, 149  
 third party, 55–6, 61–2, 66–7, 77, 150  
 timeliness in FOI matters, 89, 169  
     complaints, 44  
     Information Commissioner reviews, 42  
 timeliness in privacy matters  
     assessments, 41  
     Commissioner-initiated investigations, 31  
     complaints, 32  
     My Health Record data breach  
       notifications, 30  
     Notifiable Data Breaches scheme, 29  
     voluntary data breach notifications, 29  
     written enquiries, 35  
 Twitter, 23, 46

## U

undertakings, enforceable, 30, 61  
 Universal Student Identifier, 67  
 United Super Pty Ltd, 58  
 University of Adelaide, 21  
 University of Melbourne, 63  
 University of Technology Sydney, 37

## V

values, 11  
 Vancouver, Canada, 21  
 vexatious applicant declarations, 85  
 Vodafone, 34, 65  
 voluntary data breach notification scheme, 9, 29, 61  
 timeliness, 29

## W

Warren, Justin, 81  
 webinar, 23, 30, 71  
     Notifiable Data Breaches scheme, 23, 30, 37, 71  
     Privacy Management Plan tool, 23, 71  
 welfare payments,  
     see Enhanced Welfare Payment Integrity  
 Wickr app, 79  
 work health and safety, 99  
 workplace diversity, 96, 98  
 workplace relations, 98  
 written enquiries, 35, 44–5



# Appendix H

PGPA Rule Reference	Description	Requirement	Part of Report
<b>17AD(g) Letter of transmittal</b>			
17AI	A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with section 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	1
<b>17AD(h) Aids to access</b>			
17AJ(a)	Table of contents.	Mandatory	2
17AJ(b)	Alphabetical index.	Mandatory	194
17AJ(c)	Glossary of abbreviations and acronyms.	Mandatory	190
17AJ(d)	List of requirements.	Mandatory	195
17AJ(e)	Details of contact officer.	Mandatory	Inside cover
17AJ(f)	Entity's website address.	Mandatory	Inside cover
17AJ(g)	Electronic address of report.	Mandatory	Inside cover
<b>17AD(a) Review by accountable authority</b>			
17AD(a)	A review by the accountable authority of the entity.	Mandatory	8–11
<b>17AD(b) Overview of the entity</b>			
17AE(1)(a)(i)	A description of the role and functions of the entity.	Mandatory	6
17AE(1)(a)(ii)	A description of the organisational structure of the entity.	Mandatory	16
17AE(1)(a)(iii)	A description of the outcomes and programmes administered by the entity.	Mandatory	24–89
17AE(1)(a)(iv)	A description of the purposes of the entity as included in corporate plan.	Mandatory	7

PGPA Rule Reference	Description	Requirement	Part of Report
17AE(1)(b)	An outline of the structure of the portfolio of the entity.	Portfolio departments mandatory	6, 16, 92
17AE(2)	Where the outcomes and programs administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change.	If applicable, Mandatory	N/A

#### **17AD(c) Report on the Performance of the entity**

##### ***Annual performance Statements***

17AD(c)(i); 16F	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule.	Mandatory	24–89
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##### ***17AD(c)(ii) Report on Financial Performance***

17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory	102–139
17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	142–144
17AF(2)	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	If applicable, Mandatory.	102–139, 142–144

PGPA Rule Reference	Description	Requirement	Part of Report
<b>17AD(d) Management and Accountability</b>			
<b>Corporate Governance</b>			
17AG(2)(a)	Information on compliance with section 10 (fraud systems)	Mandatory	100
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	1
17AG(2)(b)(ii)	A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place.	Mandatory	1
17AG(2)(b)(iii)	A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity.	Mandatory	1
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	92
17AG(2)(d) – (e)	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to non compliance with Finance law and action taken to remedy non compliance.	If applicable, Mandatory	N/A
<b>External Scrutiny</b>			
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	N/A
17AG(3)(a)	Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity.	If applicable, Mandatory	N/A

PGPA Rule Reference	Description	Requirement	Part of Report
17AG(3)(b)	Information on any reports on operations of the entity by the Auditor General (other than report under section 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, Mandatory	N/A
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, Mandatory	N/A
<b>Management of Human Resources</b>			
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	95, 97
17AG(4)(b)	Statistics on the entity's APS employees on an ongoing and non ongoing basis; including the following: <ul style="list-style-type: none"> <li>▪ Statistics on staffing classification level;</li> <li>▪ Statistics on full time employees;</li> <li>▪ Statistics on part time employees;</li> <li>▪ Statistics on gender;</li> <li>▪ Statistics on staff location;</li> <li>▪ Statistics on employees who identify as Indigenous.</li> </ul>	Mandatory	95–96
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the <i>Public Service Act 1999</i> .	Mandatory	98
17AG(4)(c)(i)	Information on the number of SES and non SES employees covered by agreements etc identified in paragraph 17AG(4)(c).	Mandatory	96
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	96
17AG(4)(c)(iii)	A description of non salary benefits provided to employees.	Mandatory	97

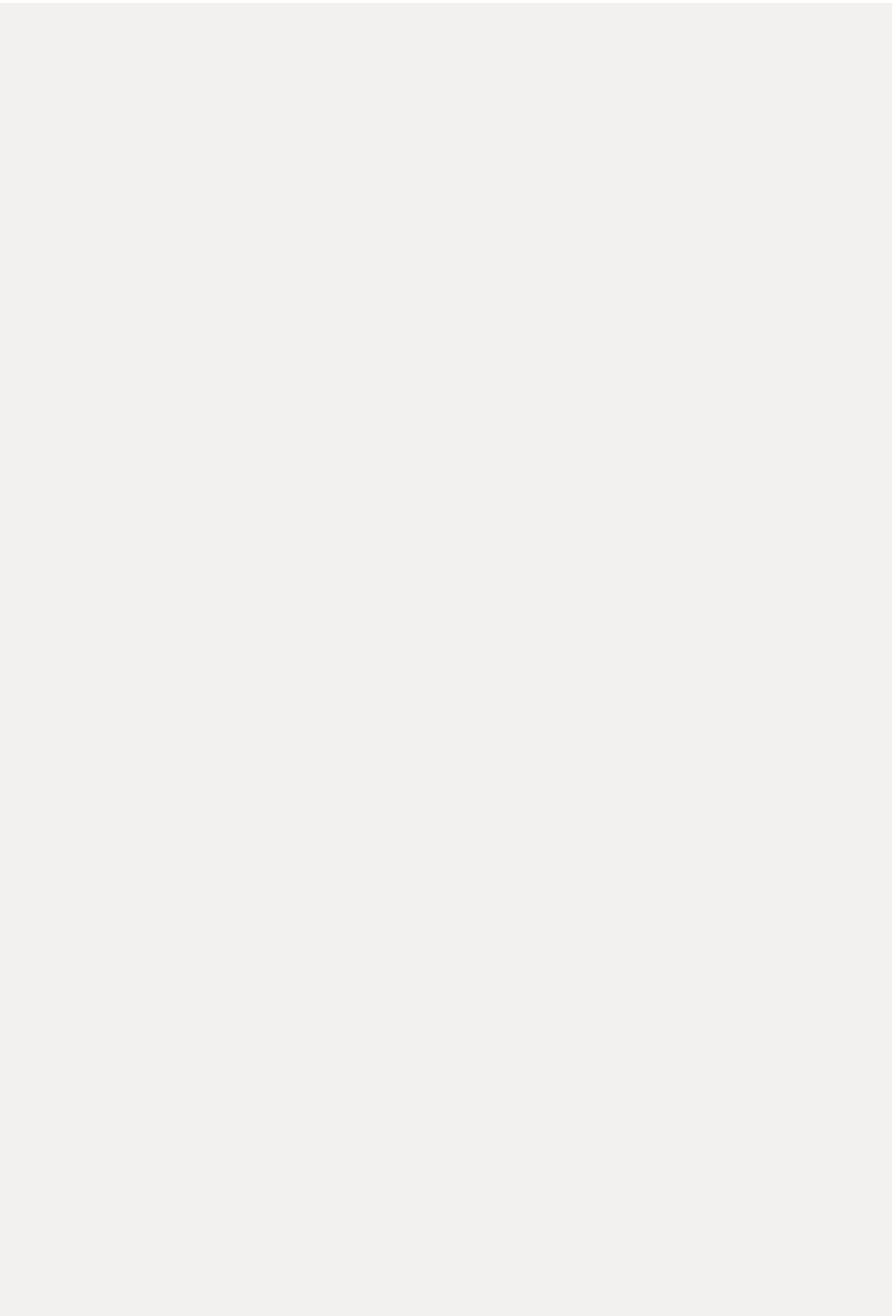
PGPA Rule Reference	Description	Requirement	Part of Report
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	If applicable, Mandatory	98
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, Mandatory	N/A
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, Mandatory	N/A
17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, Mandatory	N/A
<b>Assets Management</b>			
17AG(5)	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities	If applicable, mandatory	N/A
<b>Purchasing</b>			
17AG(6)	An assessment of entity performance against the Commonwealth Procurement Rules.	Mandatory	99
<b>Consultants</b>			
17AG(7)(a)	A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	99

PGPA Rule Reference	Description	Requirement	Part of Report
17AG(7)(b)	A statement that “During [reporting period], [specified number] new consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]”.	Mandatory	99
17AG(7)(c)	A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged.	Mandatory	99
17AG(7)(d)	A statement that “Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.”	Mandatory	99
<b>Australian National Audit Office Access Clauses</b>			
17AG(8)	If an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor General with access to the contractor’s premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, Mandatory	N/A
<b>Exempt contracts</b>			
17AG(9)	If an entity entered into a contract or there is a standing offer with a value greater than \$10 000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	If applicable, Mandatory	N/A

PGPA Rule Reference	Description	Requirement	Part of Report
<b>Small business</b>			
17AG(10)(a)	A statement that “[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance’s website.”	Mandatory	99
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	99
17AG(10)(c)	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that “[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.”	If applicable, Mandatory	99
<b>Financial Statements</b>			
17AD(e)	Inclusion of the annual financial statements in accordance with subsection 43(4) of the Act.	Mandatory	102–139
<b>17AD(f) Other Mandatory Information</b>			
17AH(1)(a)(i)	If the entity conducted advertising campaigns, a statement that “During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity’s website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance’s website.”	If applicable, Mandatory	100
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, Mandatory	N/A

PGPA Rule Reference	Description	Requirement	Part of Report
17AH(1)(b)	A statement that “Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity’s website].”	If applicable, Mandatory	100
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	101
17AH(1)(d)	Website reference to where the entity’s Information Publication Scheme statement pursuant to Part II of FOI Act can be found.	Mandatory	101
17AH(1)(e)	Correction of material errors in previous annual report	If applicable, mandatory	193
17AH(2)	Information required by other legislation	Mandatory	148–151, 152–189





[oaic.gov.au](http://oaic.gov.au)

Office of the Australian Information Commissioner

1300 363 992  
[enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
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Australian Government  
Office of the Australian  
Information Commissioner

# Office of the Australian Information Commissioner

Annual Report 2018–19



# Office of the Australian Information Commissioner

**Annual Report 2018–19**

ISSN 1839-5155

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## Contact

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**Website:** [oaic.gov.au](http://oaic.gov.au)

**Phone:** 1300 363 992

**Mail:** Director, Strategic Communications  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

Our annual report is also available free of charge on our website at [oaic.gov.au](http://oaic.gov.au).

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## Cover and design

Swell Design Group





Australian Government

Office of the Australian Information Commissioner

**The Hon Christian Porter MP**

Attorney-General  
Parliament House  
Canberra ACT 2600

Dear Attorney

I am pleased to provide to you, for presentation to the Parliament, the Office of the Australian Information Commissioner's (OAIC's) Annual Report 2018–19 for the year ending 30 June 2019.

This report has been prepared for the purposes of s 46 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which requires that I prepare and provide an annual report to you for presentation to the Parliament.

Section 30 of the *Australian Information Commissioner Act 2010* (AIC Act) requires the Information Commissioner to prepare an annual report — under aforementioned s 46 of the PGPA Act — on the OAIC's operations, including a report on freedom of information matters (defined in s 31 of the AIC Act) and privacy matters (defined in s 32 of the AIC Act).

The freedom of information matters include a summary of the data collected from Australian Government ministers and agencies in relation to activities under the *Freedom of Information Act 1982*.

I certify that the OAIC has prepared a fraud risk assessment and fraud control plan. We also have a number of appropriate fraud prevention, detection, investigation, reporting and data collection mechanisms in place. The OAIC has taken all reasonable measures to minimise the incidence of fraud.

I certify that this report has been prepared in line with the *Public Governance, Performance and Accountability Amendments (Non-Corporate Commonwealth Entity Annual Reporting) Rule 2016*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Falk'.

**Angelene Falk**

Australian Information Commissioner  
Australian Privacy Commissioner

12 September 2019

# Contents

<b>Part 1: Overview</b>	<b>5</b>
About the OAIC	6
Purpose	7
Commissioner's review	8
Our year at a glance	12
Our structure	16
Communication and collaboration	18
<b>Part 2: Performance</b>	<b>27</b>
Our annual performance statement	28
Overall performance	29
Privacy	49
Privacy assessments	66
Privacy awareness	74
Freedom of information (FOI)	76
FOI agency resources	87
<b>Part 3: Management and accountability</b>	<b>95</b>
Corporate governance	96
External scrutiny	98
Human resources	99
Procurement	104
Other requirements	106



**Part 4: Financial statements .....109**

**Part 5: Appendices .....149**

Appendix A: Agency resource statement and resources for outcomes..... 150

Appendix B: Executive remuneration..... 153

Appendix C: Memoranda of understanding ..... 157

Appendix D: Privacy statistics ..... 160

Appendix E: FOI statistics..... 164

Appendix F: Acronyms and abbreviations ..... 200

Appendix G: Correction of material errors ..... 204

Appendix H: List of requirements..... 205

Appendix I: Index ..... 214



# Part 1

## Overview

About the OAIC	6
Purpose	7
Commissioner’s review	8
Our year at a glance	12
Our structure	16
Communication and collaboration	18

# About the OAIC

The Office of the Australian Information Commissioner (OAIC) is an independent statutory agency within the Attorney-General’s portfolio, established under the *Australian Information Commissioner Act 2010 (AIC Act)*.

Our key role is to meet the needs of the Australian community when it comes to the regulation of privacy and freedom of information. We do this by:

- ensuring proper handling of personal information under the *Privacy Act 1988 (Privacy Act) and other legislation*
- protecting the public’s right of access to documents under the *Freedom of Information Act 1982 (FOI Act)*
- performing strategic functions relating to information management within the Australian Government under the AIC Act.

## Outcome and program structure

Our Portfolio Budget Statement describes the OAIC’s outcome and program framework.

Outcome      Provision of public access to Commonwealth Government information, protection of individuals’ personal information, and performance of information commissioner, freedom of information and privacy functions.

Program 1.1      Complaint handling, compliance and monitoring, and education and promotion.

Our annual performance statement details our activities, key deliverables and performance measures.

# Purpose

Our purpose is to promote and uphold privacy and information access rights.

In the *OAIC Corporate Plan 2018–19* we determined we would be successful if we:



assisted businesses and Australian Government agencies to understand their privacy obligations, and encouraged them to respect and protect the personal information they handle



efficiently and effectively took action against suspected interferences with privacy to improve compliance with the Privacy Act



helped the community to understand and feel confident to exercise their privacy and information access rights



assisted Australian Government agencies to understand their freedom of information (FOI) obligations, and respect and promote access to government information



efficiently and effectively carried out our regulatory functions under the FOI Act.



## Commissioner's review

In our data-driven economy there is increasing recognition of the value of personal information. The past year's focus on digital platforms in Australia and overseas has brought home the scale of the issues we confront in safeguarding personal data. The importance of access to information in underpinning democracy and open and accountable government has also come to the fore this year in political and media discourse around the world.

Our role in promoting and upholding privacy and access to information rights sits at the centre of these debates on how to meet community expectations and ensure organisational accountability.

These are regulatory issues with global reach, and we are working with our international counterparts as part of a worldwide movement to hold organisations to account and enforce greater transparency. Getting privacy right is not only fundamental to creating greater community trust in the exchange of personal information, it also ensures government-held information is used for public benefit, informs evidence-based policy making and supports innovation.

In addressing these challenges nationally, we worked closely with the Australian Competition and Consumer Commission (ACCC) to consider whether existing privacy legislation is fit for purpose in the digital economy. Through my role on the Executive Committee of the International Conference of Data Protection and Privacy Commissioners, we worked globally towards interoperable regulatory frameworks and support cooperative regulatory action between jurisdictions. We are actively engaged with the Asia Pacific Privacy Authorities forum and Global Privacy Enforcement Network. We are also working with the Attorney-General's Department to implement the Asia-Pacific Economic Cooperation's cross-border privacy rules system in Australia. The global interoperability of privacy law supports a strong domestic economy and provides robust protections for the privacy rights of all Australians.

In March 2019, the Australian Government announced plans for online protections for personal information and increased penalties for its misuse. Additional funding has been provided to the OAIC to assist us in regulating privacy, particularly in the online environment, which will be a significant focus for us over the next three years. These changes would build upon the significant regulatory reforms implemented in 2018. The Notifiable Data Breaches (NDB) scheme was established in February last year to strengthen consumer protection and elevate the security posture of organisations and agencies who handle personal information. Over 2018–19 we received 1,160 data breach notifications, including 950 under the mandatory NDB scheme. During this reporting period, we have worked with notifying organisations to ensure data breaches were contained and rectified, affected individuals were informed so they can act swiftly, and that measures were put in place to prevent a reoccurrence.

In May 2019, we published the *Notifiable Data Breaches Scheme 12-Month Insights Report*, which provides a clear evidence base for regulated entities to prevent data breaches. Most breaches exploited a human factor, such as an employee being tricked into providing credentials that allow cyber intrusion into information and systems. We continued to highlight the need for employees to be supported through training, processes and technology to mitigate this known risk.

Significant areas of work for the OAIC in 2018–19 include our ongoing focus on the Australian Government Agencies Privacy Code and preparing for the Consumer Data Right in our regulatory role with the ACCC and the Data Standards Body. We also regulate the privacy aspects of the My Health Record system, which transitioned to an opt-out system at the start of 2019.

These developments, along with several high-profile data breaches brought to light by the NDB scheme and the European Union's General Data Protection Regulation, have contributed to increased awareness about obligations to protect personal information. They also added to the substance and complexity of many matters brought to us to investigate.

We continued to take an evidence-based and proportionate approach to exercising the range of regulatory tools available to us. In 2018–19 we assessed privacy practices in the finance, telecommunications and government sectors, as well as the digital health sector. We engaged regularly with businesses and Australian Government agencies on good privacy practice and provided advice on a wide range of matters such as credit reporting, government-related identifiers, digital identity systems, de-identification and data-matching. We also made detailed submissions on issues relating to national security, artificial intelligence, cooperative intelligent transport systems and telecommunications.

The privacy issues raised direct us to consider closely whether community expectations, and the current scope and settings of our Privacy Act, are aligned. These issues will also be considered as part of Government's response to the *Digital Platforms Inquiry report*.

International cooperation to strengthen public access to information is also critical. Through our engagement this year with the International Conference of Information Commissioners, we continued to promote the importance of global action on open government. We also continued our work as part of the Open Government Partnership Australia to develop the third National Action Plan to improve transparency in the public sector.

This year I was appointed as a founding member of the National Data Advisory Council, looking at ways to streamline the sharing and release of government data while ensuring the protection of privacy and confidentiality. This is one of many areas where personal data handling and information management considerations converge.

We remain committed to promoting the management and use of government-held information as a national resource for public purposes. As part of this work, in June 2019 we released a survey of government agencies' compliance with the Information Public Scheme (IPS). The results confirmed a continued commitment across government to the IPS's requirements and principles. However, a decline was observed in key areas of compliance compared to our first survey in 2012.



These findings are assisting both the OAIC and government agencies to identify improvements to support the proactive publication of government information.

Day to day, our skilled and dedicated staff continued to assist the community and regulated entities in providing information and resolving a growing number of privacy and FOI complaints and requests for Information Commissioner reviews.

We received 3,306 privacy complaints in 2018–19, an increase of around 12% on the previous financial year. We assisted 2,920 complainants in resolving these issues, nearly 6% more than in 2017–18. Complaints were resolved in an average time of 4.4 months. We also handled 17,445 privacy enquiries.

The number of FOI enquiries rose by almost half in 2018–19 to 2,881 and applications for Information Commissioner (IC) reviews of FOI requests grew by almost 16% to 925. We finalised 8% more IC reviews than in the previous year. IC review decisions continue to provide important guidance to agencies.

We also launched our new website for public feedback in June 2019. Its new architecture improves navigation and search functionality and features a wide range of updated information and advice, particularly for individuals.

Across our core functions, we continued to seek ways to improve our efficiency and effectiveness so we can meet the community's needs. Through our strategic priorities, we are working on behalf of the Australian community to achieve our long-term vision of increasing public trust and confidence in the protection of personal information and access to government-held information.



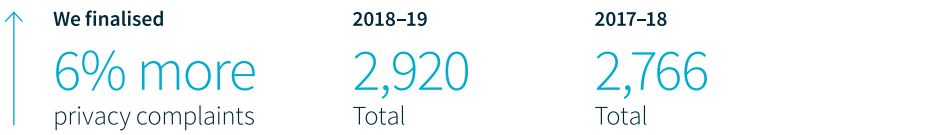
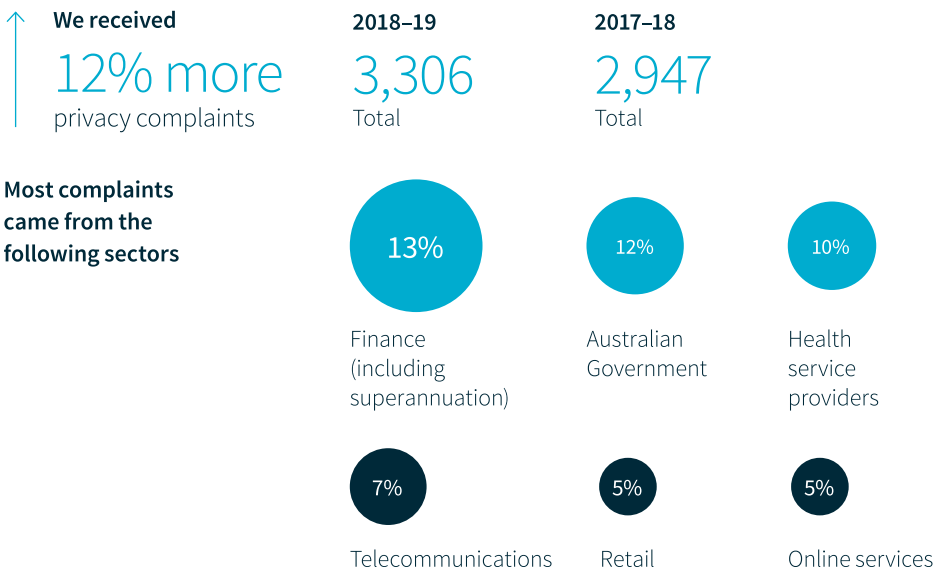
**Angelene Falk**

Australian Information Commissioner  
Privacy Commissioner

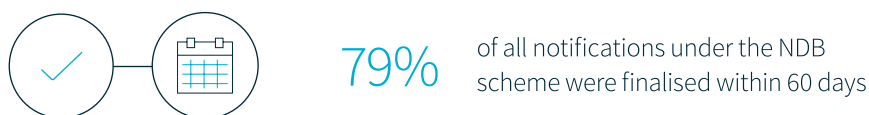
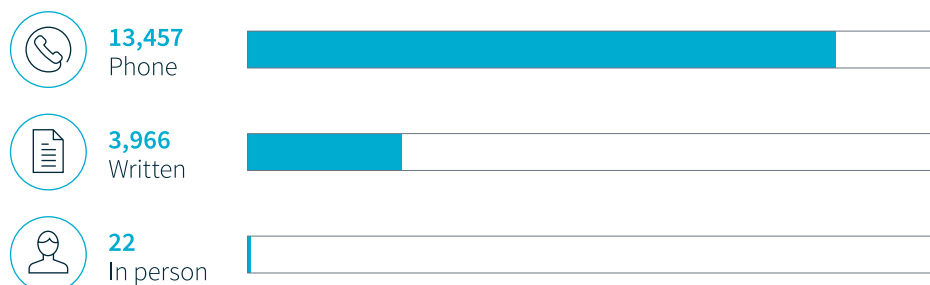
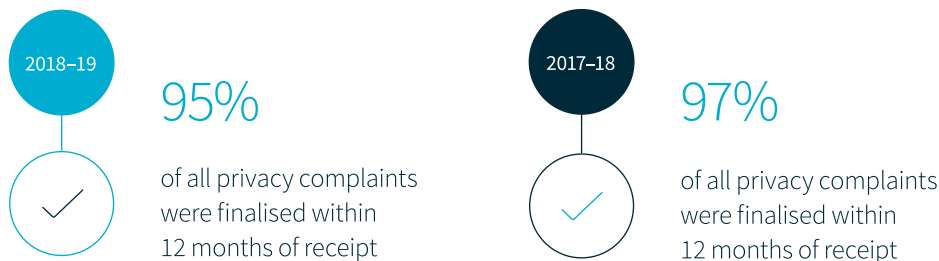
20 August 2019

# Our year at a glance

## Privacy highlights\*

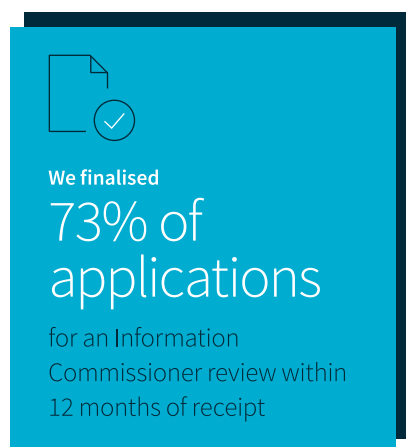
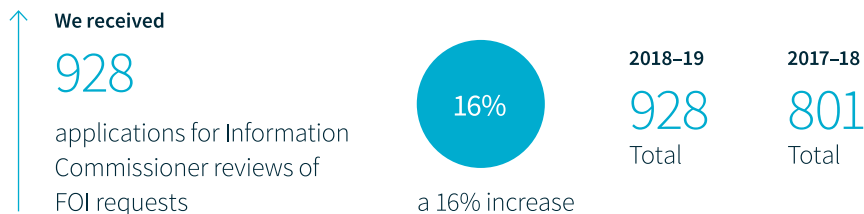


\* Percentages have been rounded to the nearest whole number.  
End-of-year statistics may differ from quarterly publication statistics.



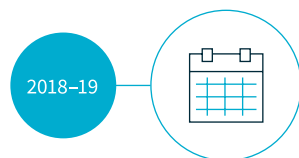
\* Corrected to take account the NDB scheme only commenced on 22 February 2018.

## FOI highlights\*



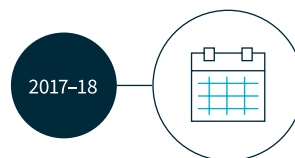
### The top five agencies involved in Information Commissioner reviews were:

- 1 Department of Home Affairs (198)
- 2 Department of Human Services (104)
- 3 Department of Veterans' Affairs (47)
- 4 Australian Federal Police (46)
- 5 Department of Defence (44)



Average time taken to finalise an Information Commissioner review in 2018-19 was

**7.8 months**

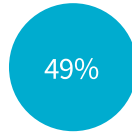


Average time taken to finalise an Information Commissioner review in 2017-18 was

**6.7 months**

\* Percentages have been rounded to the nearest whole number.

**We handled**  
**2,881**  
 FOI enquiries which is a  
 49% increase on 2017–18



**2,051**  
 Phone



**824**  
 Written



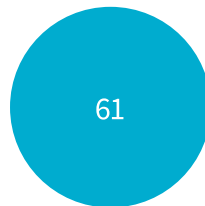
**6**  
 In person



#### We received

**61**

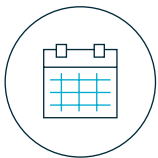
FOI complaints which was a  
 similar number to last year



2018–19



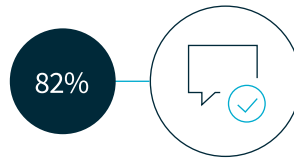
2017–18



**Average time taken to  
 close FOI complaints was**

**7.2 months**

compared to 5.8 months  
 in 2017–18



**82%**

of FOI complaints were  
 finalised within 12 months  
 of receipt, compared to  
 83% in 2017–18

## Our structure

The OAIC is headed by the Australian Information Commissioner, a statutory officer appointed by the Governor-General. The Commissioner has a range of powers and responsibilities outlined in the AIC Act, and also exercises powers under the FOI Act, the Privacy Act and other privacy-related legislation.

The Australian Information Commissioner is the agency head accountable for strategic oversight and the OAIC's regulatory, strategic, advisory and dispute resolution functions, as well as financial and governance reporting.

Angelene Falk was appointed by the Governor-General to the roles of Australian Information Commissioner and Privacy Commissioner on 16 August 2018. She was acting Australian Information Commissioner and Privacy Commissioner from 24 March 2018 to 15 August 2018.



## Angelene Falk

Angelene Falk has held senior positions in the OAIC since 2012, including serving as Deputy Commissioner from 2016 to March 2018.

Over the past decade, she has worked extensively with Australian Government agencies, across the private sector and internationally, at the forefront of addressing regulatory challenges and opportunities presented by rapidly evolving technology and potential uses of data. Her experience extends across industries and subject matter, including data breach prevention and management, data sharing, credit reporting, digital health and access to information.

She holds a Bachelor of Laws with Honours and a Bachelor of Arts from Monash University and a Diploma in Intellectual Property Law from Melbourne University.

## Support to the Commissioner

The Commissioner is supported by an Executive team of three substantive Senior Executive Services (SES) positions, and expert staff, working within the Dispute Resolution, Regulation and Strategy, and Legal and Governance branches.

Generally, the Dispute Resolution branch is responsible for resolving privacy complaints, FOI Information Commissioner reviews, Commissioner initiated privacy and FOI investigations and the OAIC's public information service. The Regulation and Strategy branch provides guidance, examines and drafts submissions on proposed legislation, conducts assessments, and provides advice on inquiries and proposals that may have an impact on privacy. The Legal and Governance branch provides legal and corporate services and strategic communications functions.

## Communication and collaboration

We used a range of networks and communication channels during this reporting period to raise awareness across businesses, government agencies and the public about privacy and information access rights and responsibilities.

We have highlighted some of these activities below and give more detail in Part 2.

### Our networks

We hosted and participated in a number of domestic and international privacy and information access networks which provided opportunities to collaborate and share expertise with stakeholders.

#### Privacy Professionals Network

The Privacy Professionals Network (PPN) is for public and private sector privacy professionals. Its membership grew during this reporting period from 3,442 to 3,623 members.

We sent regular updates to PPN members on topics such as: agencies we recently recognised to handle particular privacy-related complaints (an external dispute resolution scheme); our recent submissions about privacy-related matters to the Australian Government or other entities; a new or updated resource on a topic of interest, such as the My Health Record system; and relevant national or international developments.

The majority of PPN events in 2018–19 were fully subscribed and provided PPN members with an opportunity to hear from experts and network with colleagues.



PPN events during this reporting period included:

- a presentation on privacy issues at the GRC Institute in Perth in November 2018
- a Privacy Awareness Week (PAW) business breakfast in Sydney in May 2019, where the Commissioner shared insights from the first 12 months of the NDB scheme
- a Privacy Authorities Australia panel discussion in Brisbane in April 2019, that focused on the challenges each jurisdiction faced and opportunities for cross-border collaboration.

## Information Contact Officer Network

Our Information Contact Officer Network (ICON) for Australian Government FOI contact officers was given regular updates on topics such as: recent IC review decisions; a new or update resource on a topic of interest, such as updates to the FOI Guidelines; and relevant national or international developments.

At the end of this reporting period there were 527 ICON members.

We held two ICON information sessions in Canberra during this reporting period to update members on recent FOI activity, decision review trends and our priorities:

- In September 2018, the Commissioner and the Executive team were joined by representatives of the Department of the Prime Minister and Cabinet and the Department of Finance.
- In April 2019, our ICON session featured representatives of the National Archives of Australia and an introduction to the Open Australia Foundation's Right to Know website.

## Consumer Privacy Network

The Consumer Privacy Network (CPN) furthers the privacy community's understanding of current privacy issues affecting consumers. Members were appointed for a two-year period:

- Australian Communications Consumer Action Network
- Australian Privacy Foundation
- Consumer Action Law Centre
- Consumer Credit Law Centre South Australia
- Consumers Health Forum of Australia
- Electronic Frontiers Australia Inc
- Financial Rights Legal Centre Inc (NSW)
- Internet Australia

- Legal Aid New South Wales
- Legal Aid Queensland
- The Foundation for Young Australians
- National LGBTI Health Alliance
- Federation of Ethnic Communities' Councils of Australia
- National Mental Health Consumer & Carer Forum.

## Domestic networks

### Privacy Authorities Australia

Privacy Authorities Australia (PAA) is a group of Australian privacy authorities who meet regularly to promote best practice and consistency of privacy policies and laws. We joined privacy representatives from all states and territories as a member of PAA.

### Association of Information and Access Commissioners

This Australian and New Zealand network is for information access authorities who administer FOI legislation. In September 2018, we hosted a meeting of the Association of Information and Access Commissioners (AIAC) members at our office in Sydney.

## International networks

### Asia Pacific Privacy Authorities forum

The Asia Pacific Privacy Authorities (APPA) forum is the principal forum for privacy authorities in the Asia-Pacific region for exchanging ideas about privacy regulation, emerging technologies, and managing privacy enquiries and complaints.

### Common Thread Network

This network brings together data protection and privacy authorities from Commonwealth countries.

### Global Privacy Enforcement Network

The Global Privacy Enforcement Network is designed to facilitate cross-border cooperation in enforcing privacy laws.

## International Conference of Data Protection and Privacy Commissioners

The largest and longest standing network for data protection and privacy authorities, the International Conference of Data Protection and Privacy Commissioners (ICDPPC) brings together organisations from around the world to provide leadership at international level in data protection and privacy.

The Commissioner was elected to the ICDPPC Executive Committee in October 2018 and is a co-chair of the ICDPPC Digital Citizen and Consumer Working Group.

## International Conference of Information Commissioners

The International Conference of Information Commissioners (ICIC) comprises information commissioners and ombudsmen from around the world. The ICIC provides an opportunity for information commissioners, practitioners and advocates to exchange ideas, to identify emerging trends and challenges and to strengthen public access to information.

## Events

During this reporting period, our Executive team and senior staff delivered speeches and presentations and took part in panel discussions at 36 external events, including:

- Australian Communications Consumer Action Network ACCANect National Conference, Sydney, September 2018
- Australian Information Security Association Cyber Conference, Melbourne, October 2018
- the keynote address for the International Association of Privacy Professionals Australia and New Zealand Summit, Melbourne, November 2018
- International Institute of Communications Digital Platforms seminar, Sydney, February 2019
- a panel discussion on ‘Privacy and openness — is the balance right?’ for the Australian Banking Association, Sydney, March 2019
- Australian Government Solicitor FOI and Privacy Forums, Canberra, November 2018 and May 2019
- Australian Insurance Law Association National Conference, Perth, November 2018
- a panel discussion on the ‘Increasing importance of the interrelationship between information access and data protection, including open data’ at the ICIC, Johannesburg, March 2019

- a panel discussion on ‘Privacy — what patient and hospital information can be shared?’ at the Australian Private Hospitals Association National Conference, Melbourne, March 2019
- a presentation on ‘Trust in the data economy: the role of stakeholders’ at the International Seminar on Personal Data, a G20 Summit Side Event, Tokyo, June 2019.

## Privacy Awareness Week

Privacy Awareness Week (PAW) is an annual initiative of the APPA forum. It is held every year to promote and raise awareness of privacy issues and the importance of protecting personal information.

In 2019, PAW ran from 12 to 18 May, promoting a range of privacy priorities through the theme ‘Don’t be in the dark on privacy’. This message was supported by a digital campaign that directed businesses, agencies and consumers to useful resources and the PAW website.

Events included a sold-out business breakfast, attended by approximately 150 representatives from business and government. Members of the Executive team and senior staff also represented the OAIC at events throughout the week, including at the Australian Government Solicitor FOI and Privacy Forum in Canberra, the Deloitte Privacy Index launch in Sydney and an Information Integrity Solutions event in Melbourne.

A record number of organisations signed up as official supporters of PAW (500, up from 360 in 2017–18) and promoted the importance of good privacy practice to their stakeholders, customers and staff. PAW supporters were given a wide range of resources to share through internal and external communication channels, including posters, social media posts and digital assets; as well as the presentation’s slides which included useful information for agencies on the Australian Government Agencies Privacy Code and the NDB scheme.

We also launched a new online game, Privacy Challenge, for PAW 2019 to raise public awareness of how to protect personal information in the digital and real-world environment. The Privacy Challenge features three different scenarios that explore a range of situations including smart phone security, social media privacy, credit reports and scams. The scenarios in this community e-learning resource were launched 2,678 times between 17 May to 30 June 2019.

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*Our ability to prevent, detect, deter and remedy relies on cooperation and collaboration, across regulatory regimes, across borders, with the community, business, government and academics.*

*This is central to our approach to regulating in the global economy: developing regulatory policy and guidance that takes account of global developments, creating interoperable regulatory frameworks, and cooperative international regulatory action.*

Angelene Falk, Australian Information Commissioner and Privacy Commissioner, keynote address to the PAW Business Breakfast, 'Making privacy the priority: privacy and data protection in our interconnected world', 13 May 2019.

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## Paw snapshot



16,045

PAW website views



500

PAW supporters



865

PAW posts on social media



## Right to Know Day

Our Right to Know Day campaign aimed to raise awareness about the public's right to access government-held information through a dedicated website, digital promotion and events in the lead up to international Right to Know Day on 28 September 2018.

The Right to Know website hosted a new series of FOI videos, event listings, resources and promotional materials. Our events to mark Right to Know Day included an ICON information session in Canberra on the role of the FOI practitioner in promoting accountability and transparency and a community event in Sydney on 27 September 2018 where our staff engaged with more than 500 people about access to information issues.

We also hosted a meeting of the AIAC from 20 to 21 September 2018, where members collaborated on a joint statement to promote Right to Know Day and the importance of open government.

## Media and social media

Media interest in our work remained strong throughout 2018–19, reflecting continued community awareness of privacy and information access rights. Media coverage of personal information security issues was also driven by mandatory notifications of data breaches to affected individuals and the OAIC, and our regular statistical reports on the NDB scheme.

We responded to 238 media enquiries in 2018–19 (compared to 317 in 2017–18) from a range of mainstream, business and digital publications.

We actively promoted awareness of privacy and information access rights through the social media channels, increasing followers and page likes across Facebook and Twitter. We also regularly shared privacy and information access updates through our e-newsletter, which was relaunched in May 2019 as 'Information Matters' to a combined subscriber base of almost 7,800 people.



### Facebook

Almost 60,000 people actively engaged with our campaign posts to promote awareness of privacy controls within the My Health Record system.

Page likes grew by almost 10% to 2886.



## Twitter

More than 913,000 tweet impressions.

Followers grew by almost 10% to more than 5,200.

## Webinars and podcasts

We partnered with the Royal Australian College of General Practitioners (RACGP) to present three webinars on the NDB scheme in February 2019, which attracted 222 attendees and 145 downloads. The webinars were part of a broader communications campaign with the RACGP to promote good privacy and personal information handling practices to their members.

For PAW 2019, we partnered with Wolters Kluwer to present a webinar on the NDB scheme that highlighted the findings and recommendations from our *Notifiable Data Breaches Scheme 12-Month Insights Report*. The webinar attracted almost 400 registrations, and 95% of attendees rated the session as ‘excellent’ or ‘very good’.

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*This webinar has filled some gaps and clarified the major grey areas.  
The questions session gave a great opportunity to clarify any uncertainty.  
I am more confident in my knowledge now.*

PAW webinar attendee

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We also collaborated with Legal Aid NSW to create a podcast on consumer credit reporting issues for PAW, which has since been downloaded more than 250 times.





# Part 2

## Performance

Our annual performance statement	28
Overall performance	29
Privacy	49
Privacy assessments	66
Privacy awareness	74
Freedom of information (FOI)	76
FOI agency resources	87

# Our annual performance statement

## Introduction

I, Angelene Falk, as the accountable authority of the Office of the Australian Information Commissioner (OAIC), presents the 2018–19 annual performance statement of the OAIC, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, this annual performance statement is based on properly maintained records, accurately reflects the performance of the entity, and complies with subsection 39(2) of the PGPA Act.

## Overall performance

During this reporting period, we worked to achieve 43 performance measures outlined in the *OAIC Corporate Plan 2018–19*. We met the target for 38 of these performance measures and we did not achieve four (one measure did not apply during this reporting period).

We:

- promoted and upheld privacy rights by achieving 30 of the 32 performance measures
- promoted and upheld information access rights by achieving 8 of the 11 performance measures (one measure did not apply during this reporting period).

## Promote and uphold privacy rights

We:

- negotiated and accepted enforceable undertakings from the Commonwealth Bank of Australia Ltd and Wilson Asset Management (International) Pty Ltd
- conducted targeted privacy assessments in areas such as finance, telecommunications, government, data matching and digital health
- finalised 2,919 privacy complaints, a 5.5% increase on the number of privacy complaints we closed last financial year, while managing a 12.1% increase in privacy complaints received
- published quarterly reports on the operation of the Notifiable Data Breach (NDB) scheme and the *Notifiable Data Breaches Scheme 12-Month Insights Report*
- finalised 79% of notifications received for 950 notifiable data breaches (under the NDB scheme) within 60 days, finalised 66.1% of voluntary notifications for 175 data breaches within 60 days and finalised 90% of notifications received for My Health Record data breaches within 60 days
- made two public interest determinations on the disclosure of homicide data for the Australian Federal Police and the Australian honours system for the Department of Home Affairs
- released a new training resource about the *Privacy (Australian Government Agencies — Governance) APP Code 2017* (Privacy Code) and the Notifiable Data Breaches (NDB) scheme
- launched new resources for My Health Record consumers
- launched our new website for public feedback.

## Promote and uphold information access rights

We:

- finalised 659 Information Commissioner (IC) reviews, an 8% increase on the number of IC reviews we closed last financial year, while managing a 15.9% increase in IC review applications
- published the Information Publication Scheme (IPS) Survey 2018
- published a revised guide for Access to Government Information — Administrative Access
- launched a digital campaign for Right to Know Day 2018.

## Results

Our performance is measured against the activities in the *OAIC Corporate Plan 2018–19*. Where a performance measure covers a target in the Portfolio Budget Statement, an asterisk (\*) is shown against the performance measure.

### Privacy performance measures

#### Corporate Plan activity 1.1

Develop the privacy management capabilities of businesses and Australian Government agencies and promote privacy best practice.

**Performance measure 1.1.1** The OAIC applies a risk-based, proportionate approach to facilitate privacy compliance and promote privacy best practice.

✓ Achieved

During this reporting period, we engaged with entities reporting under the NDB scheme on requirements of the NDB scheme, causes of the data breach and measures to prevent reoccurrence. We used intelligence from privacy enquiries, privacy complaints and NDB reports, privacy assessments, media reports and tip-offs, to decide on appropriate regulatory action. We conducted preliminary inquiries or opened investigations on the Commissioner's own initiative for 15 matters.

We regularly engaged with business and Australian Government agencies, including providing advice and guidance on how to comply with the *Privacy Act 1988* (Privacy Act) and deliver privacy best practice.

We released a new training resource about the Privacy Code and NDB scheme during Privacy Awareness Week (12 to 18 May 2019) to educate Australian Government agencies about privacy best practice.

We published the *Notifiable Data Breaches Scheme 12-Month Insights Report*, which is available on our website, to help businesses and agencies understand the common causes of data breaches and how they can implement proactive strategies to prevent data breaches.

We launched new resources for My Health Record consumers.

**Performance measure 1.1.2** Guidance and educational materials are updated to include learnings from regulatory activities such as assessments and investigations.

✓ Achieved

We regularly updated our guidance and educational materials to make sure they are current and relevant.

For example, we released a new website for public review in June 2019 (see performance measure 1.7.4). During Privacy Awareness Week (PAW) we provided guidance to organisations and Australian Government agencies about their obligations under the Privacy Code.

**Performance measure 1.1.3** Regular engagement and consultation with businesses and Australian Government agencies is undertaken.

✓ Achieved

We engaged regularly with businesses and Australian Government agencies, including providing advice on a wide range of matters such as the Australian Competition and Consumer Commission's (ACCC) Digital Platforms Inquiry, the Consumer Data Right scheme, changes to the My Health Record system and the *Privacy (Credit Reporting) Code 2014*.

We drafted submissions on nine different issues, such as cooperative intelligent transport systems, automated vehicle data, Australian Government data sharing and telecommunications.

**Performance measure 1.1.4** Privacy Professionals' Network (PPN) members are provided with information that is relevant and engaging, a minimum of 10 times per year.

✓ Achieved

We continued to offer PPN members regular information and updates. In 2018–19, PPN members received 10 e-newsletters. We also invited them to events which included discussion panels and OAIC privacy training.

**Performance measure 1.1.5** Levels of engagement with PPN members are recorded.

✓ Achieved

We had our highest number of organisations supporting our PAW campaign with 507 becoming PAW partners, up from 360 in 2017–18.

During this reporting period, the PPN membership continued to grow from 3,442 members to 3,623. More than half PPN members (51%) opened our e-newsletter and 39% clicked on a specific link in the e-newsletter.

### Corporate Plan activity 1.2

Manage data breach notifications.

**Performance measure 1.2.1\*** 80% of data breach notifications are finalised within 60 days.

✗ Not achieved

We:

- finalised 79% of notifications received under the NDB scheme within 60 days
- finalised notifications received under the NDB scheme in an average of 45.3 days
- finalised 66.1% of voluntary data breach notifications received within 60 days
- finalised voluntary data breach notifications in an average of 60.4 days.

**Performance measure 1.2.2\*** 80% of My Health Records data breach notifications are finalised within 60 days.

✓ Achieved

We finalised 90% of My Health Record data breach notifications received within 60 days.

**Performance measure 1.2.3** Guidance and support tools are promoted for the data breach notification schemes the OAIC oversees.

✓ Achieved

We published a resource for regulated entities on tips to prevent and mitigate data breaches with the Australian Cyber Security Centre.

We recorded and published:

- an interactive webinar with the Royal Australian College of General Practitioners (RACGP) on the requirements of the NDB scheme for health service providers, with case studies and frequently asked questions
- resources and information for RACGP members including updated flowcharts on the NDB scheme and My Health Record data breaches
- an interactive webinar on the requirements of the NDB scheme, and the lessons from the first 12 months of the NDB scheme's operation, with case studies on best practice and approaches to multi-party data breaches.

**Performance measure 1.2.4** Statistics on data breach notifications are published.

✓ Achieved

We published four quarterly reports on the operation of the NDB scheme. These reports included key statistics on the number of notifications received, the number of individuals whose personal information was involved in the data breach, detailed breakdowns on the reported sources of data breaches, comparisons of data breaches reported by the top five sectors and the kinds of personal information affected. They also provided detailed breakdowns of the types of data breaches notified by the top two reporting sectors.

In May 2019, we published the *Notifiable Data Breaches Scheme 12-Month Insights Report*, which is available on our website. The report provided lessons learned from the first year of the NDB scheme's operation, as well as information about the changing international landscape with regards to privacy and mandatory data breach reporting schemes. The report also highlighted best practice tips and case studies from organisations that had notified under the NDB scheme, and strategies for mitigating the risk of cyber incidents.



### Corporate Plan activity 1.3

Conduct Commissioner initiated investigations (CIIs).

**Performance measure 1.3.1\*** 80% of CIIs are finalised within eight months.

✓ Achieved

Of the privacy CIIs finalised during this reporting period, 86% were finalised within eight months.

This reflected our commitment to working with respondents to resolve issues of non-compliance and improve privacy practices, as well as our efforts to reduce the time taken to progress a privacy CII.

For more information about CIIs, see page 65.

**Performance measure 1.3.2** CIIs result in improvements in the privacy practices of investigated organisations.

✓ Achieved

We made inquiries of, or investigated, organisations to ensure compliance with the Privacy Act. We accepted enforceable undertakings from two respondents in 2018–19: the Commonwealth Bank of Australia Ltd and Wilson Asset Management (International) Pty Ltd.

Each enforceable undertaking included steps the respondent agreed to take to address concerns we raised in the CII. By implementing these steps, the respondents will improve their privacy policies and procedures.

**Performance measure 1.3.3** CII outcomes and lessons learnt are publicly communicated.

✓ Achieved

We:

- published the enforceable undertakings accepted from the Commonwealth Bank of Australia Ltd and Wilson Asset Management (International) Pty Ltd on our website
- published statements and media releases on our website about the conclusion of these matters and the lessons learnt
- publicly communicated the lessons learnt from CIIs in external speeches and presentations given by OAIC staff.

**Performance measure 1.3.4** The OAIC applies a risk-based and proportionate approach to commencing and conducting CILs.

✓ Achieved

We applied the framework set out in the Guide to Privacy Regulatory Action (which is available on our website) when deciding whether to commence an investigation. As a result we commenced investigations into 15 matters.

### Corporate Plan activity 1.4

Resolve privacy complaints.

**Performance measure 1.4.1\*** 80% of privacy complaints are finalised within 12 months.

✓ Achieved

We:

- finalised 95.1% of all privacy complaints within 12 months of receipt — 4.4 months was the average time taken to close a privacy complaint
- closed 5.5% more privacy complaints than in 2017–18
- responded to an 11% increase in privacy complaints in the number of privacy complaints received (2017–18: 18% increase)
- increased staffing levels in our Early Resolution team to continue the efficient processing of privacy complaints.

We ensured the quality of our privacy complaint process by:

- handling privacy complaints in line with our privacy regulatory action policy and privacy regulatory action guide
- undertaking regular staff training, including conciliation and investigations training, administrative law training and mental health training
- enabling staff to participate in complaint handling networks and events, including the Commonwealth Ombudsman's Complaint Handling Forum and PAW activities
- holding regular staff meetings to discuss matters of significance across the teams and to ensure consistency in decision-making — for example, all the Dispute Resolution branch staff regularly met to discuss privacy cases

For more information on resolving privacy complaints, see page 57.

**Performance measure 1.4.2** The complaint handling service is promoted to the community.

✓ Achieved

We promoted our complaints handling service to the community through media releases, speaking engagements, event campaigns and social media.

We promoted the OAIC's regulatory function and complaint handling service as part of our My Health Record privacy controls campaign on Facebook and Twitter.

We also promoted our complaint handling service through our campaigns for Privacy Awareness Week and Right to Know Day.

**Performance measure 1.4.3** Complaint handling processes are reviewed to ensure they align with current best practice and relevant legislative developments.

✓ Achieved

We reviewed our internal processes and developed a policy for responding to unreasonable client conduct. When finalised, this policy will always ensure best practice when handling unreasonable clients and support staff to manage challenging interactions.

We hired an external consultant to help us improve the timeliness of our privacy complaint process. We are currently developing strategies to reduce a backlog of privacy complaints.

### Corporate Plan activity 1.5

Conduct privacy assessments.

**Performance measure 1.5.1** Complete assessments in accordance with the schedule developed in consultation with the business or agency being assessed.

✗ Not achieved

We generally completed the information review and fieldwork stages of privacy assessments in line with a schedule we developed with the business or agency being assessed; however, the assessment report was not finalised on schedule in all cases. We will continue to improve our assessment reporting process in the next financial year and work with the business or agency being assessed to finalise draft assessment reports promptly.

**Performance measure 1.5.2** Monitoring and compliance approaches are coordinated with the business and operational needs of the business or agency being assessed.

✓ Achieved

We undertook professional, independent and systematic assessments in line with our privacy regulatory action policy and our guide to privacy regulatory action.

We engaged with and provided preliminary briefings to the business or agency being assessed prior to starting the formal assessment. This clarified our expectations and allowed us to develop a schedule that recognised the operational needs of the business or agency being assessed.

We engaged ICT security consultants to assist with the technical aspects of some of our Australian Privacy Principle 11 (security of personal information) assessments. For example, we engaged these consultants to support a series of assessments that considered how particular telecommunications service providers were protecting personal information.

**Performance measure 1.5.3** A high proportion of recommendations are accepted by the business or agency being assessed.

✓ Achieved

All businesses or agencies assessed accepted all our recommendations.

During an assessment, we proactively and openly raised privacy risks we identified and our recommendations to the business or agency being assessed. This promoted discussions with the business or agency about strategies to mitigate the privacy risks.

**Performance measure 1.5.4** Key assessment outcomes and lessons learnt are publicly communicated where appropriate.

✓ Achieved

We undertook assessments in the form of surveys with a number of businesses or agencies in a particular sector. We provided those businesses or agencies with individual reports and intend to publish a summary report on our website in 2019–20. This will provide general guidance to APP entities, while also providing tailored advice to the entities assessed.

### Corporate Plan activity 1.6

Provide a privacy public information service.

**Performance measure 1.6.1\*** 90% of written enquiries are responded to within 10 working days.

✓ Achieved

We finalised 92% of written privacy enquiries within 10 working days. This is a significant improvement on our 2017–18 response rate of 74%. This improvement reflects a reallocation of resources and changes to the management of the OAIC's enquiries service, which were put in place in 2017–18, and our ongoing commitment to provide a timely public information service to the Australian public. For more information, see Privacy Enquiries on page 50.

**Performance measure 1.6.2** Community, legal and other networks are identified for targeted promotion of the public information service.

✓ Achieved

We partnered with Legal Aid NSW during PAW (12 to 18 May 2019) to produce a podcast interview about credit reporting. By discussing a series of examples, we helped community workers and the public understand the circumstances in which they can gain access to their credit reports for free, how they may correct the information on their credit reports, and their rights to pursue complaints about their credit reports with recognised external dispute resolution schemes and the OAIC.

The Commissioner presented information about the OAIC and our functions to the Communications and Media Law Association and the annual conference of communications consumer representatives.

We also worked closely with the RACGP to increase member awareness of our regulatory role, including providing information about our public information service.

**Performance measure 1.6.3** Website content is reviewed and updated as required to support our public information service.

✓ Achieved

We released a new website for public feedback in June 2019 (see performance measure 1.7.4).

### Corporate Plan activity 1.7

Promote awareness and understanding of privacy rights in the community.

**Performance measure 1.7.1** Media and social media mentions about privacy rights increase.

✓ Achieved

There were 2,805 online media mentions and 6,770 social media mentions of privacy rights and the OAIC during this reporting period (2017–18: 2,851 online media mentions and 4,400 social media mentions).

We responded to 238 media enquiries during the year, including 194 about privacy and 25 about My Health Record.

**Performance measure 1.7.2** Awareness and understanding about privacy rights and the role of the OAIC improves.

✓ Achieved

The consistent number of online media mentions and increasing number of social media mentions demonstrate continued and growing awareness of our privacy role. Our social media following has also increased.

The increase in privacy complaints also demonstrates increased awareness of the OAIC's complaint handling service.

**Performance measure 1.7.3** Attendance numbers and positive feedback from public facing events increases.

✓ Achieved

We successfully hosted a breakfast event for PAW, attended by 160 privacy professionals and other stakeholders. The event sold out, and 95% of attendees surveyed indicated they would attend the PAW business breakfast again next year.

A joint webinar with Wolters Kluwer on the NDB scheme had more than 200 participants and 95% rated the webinar as 'excellent' or 'very good'.

The OAIC also ran a number of privacy training sessions for Australian Government privacy officers, with each session booked to capacity.

**Performance measure 1.7.4** The OAIC's website is accessible to the community and content about privacy rights is regularly reviewed and updated.

✓ Achieved

We released our new website for public feedback in June 2019. The website features improvements such as:

- better search functionality, design and navigation in response to user feedback
- information in one location — information that was once repeated or found over several pages is now on a single page
- removing non-current information so the search function works more effectively
- removing the print-based concept of 'fact sheets' and 'resources' and consolidating content into topics
- content for individuals rewritten in plain English.

### Corporate Plan activity 1.8

Develop legislative instruments.

**Performance measure 1.8.1** Applications for public interest determinations and Australian Privacy Principles (APP) codes are considered and responded to in a timely manner.

✓ Achieved

We did not receive any APP code applications during 2018–19.

We received three applications for a public interest determination:

- Privacy (Disclosure of Homicide Data) Public Interest Determination 2019 — commenced 20 March 2019 — permits the Australian Federal Police to disclose certain personal information to the Australian Institute of Criminology for the purpose of the Australian Institute of Criminology's research under the National Homicide Monitoring Program and the publication of aggregate findings.
- Privacy (Australian Honours System) Public Interest Determination 2018 — commenced 12 October 2018 — permits the Department of Home Affairs to disclose personal information to the Office of the Official Secretary to the Governor-General and the Department of the Prime Minister and Cabinet for verifying the Australian citizenship and/or permanent residency status of individuals who are the subject of nominations for membership or honorary membership of the Order of Australia, or for other awards in the Australian honours system.

- Australian Financial Complaints Authority (AFCA) — received 17 June 2019 — requested a public interest determination to be made by the Commissioner deeming AFCA an ‘agency’ for the sole purpose of interpreting APP 12. APP 12 provides that if an entity is an agency, the entity is not required to give access to personal information if the entity is required or authorised to refuse an individual access to personal information under the *Freedom of Information Act 1982* (FOI Act) or any other federal Act. We are currently considering this application.

#### **Performance measure 1.8.2** Legislative instruments are reviewed when necessary.

 Achieved

The acting Australian Information Commissioner and acting Privacy Commissioner approved a variation of the *Privacy (Credit Reporting) Code 2014* (v2) (CR Code) on 29 May 2018, following an application by the code developer, the Australian Retail Credit Association. The variation addressed some of the recommendations and feedback in the independent review of the CR Code undertaken in 2017. The varied CR Code commenced on 1 July 2018.

On 18 April 2019, the Australian Retail Credit Association made a second application to vary the CR Code under section 26T of the Privacy Act. This variation addresses the remainder of the recommendations and feedback in the independent review of the CR Code undertaken in 2017. This application is currently under consideration.

### **Corporate Plan activity 1.9**

Conduct regulatory activities and help businesses understand their rights and responsibilities under the Consumer Data Right (CDR).

#### **Performance measure 1.9.1** Regular dialogue with the ACCC and other relevant stakeholders is conducted to ensure the effective operation of the CDR scheme.

 Achieved

We engaged regularly with the ACCC and the Treasury, including through the provision of advice on draft legislative instruments and draft CDR rules, as well as guidance on general privacy matters affecting the CDR scheme.

We also engaged regularly with the Data Standards Body (CSIRO’s Data61), including through the provision of advice on development work for the technical standards relating to consumer experience and attended as observers Data Standards Advisory Committee meetings.



**Performance measure 1.9.2** Guidance and education materials are developed to support a clear understanding of rights and obligations under the CDR scheme.

✓ Achieved

Since the publication of the *OAIC Corporate Plan 2018–19* the commencement date of the CDR scheme in the banking sector has moved from July 2019 to 1 February 2020.

Development of guidance and education materials is underway, including guidelines for the avoidance of acts or practices that may breach the privacy safeguards.

**Performance measure 1.9.3** Internal processes and protocols are developed to support the implementation of the CDR.

✓ Achieved

We created internal governance mechanisms to support the implementation of the CDR including developing project plans and reporting tools and establishing a CDR Project Governance Board.

We have reviewed existing processes and have begun developing new processes to support an efficient and effective CDR complaint handling process.

We have also started preparing internal training and other resources to ensure our Enquiries team are well equipped to answer questions from the public regarding the CDR.

## Freedom of information performance measures

### Corporate Plan activity 2.1

Develop the freedom of information (FOI) capabilities of Australian Government agencies and ministers, and promote FOI best practice.

**Performance measure 2.1.1** Tools and guidance are updated to assist Australian Government agencies to comply with the Information Publication Scheme (IPS).

⊗ Not achieved

In June 2019 we published the *Information Publication Scheme Survey 2018*, a survey of all Australian Government agencies subject to the FOI Act. The survey reviewed the operation of the IPS and gave agencies an opportunity to comply with the requirement to conduct a review under s 9 of the FOI Act.

In 2019–20, we will develop tools and guidance, including updating the Part 13 of the FOI Guidelines, to address issues identified in the IPS survey to help agencies better comply with their IPS obligations.

**Performance measure 2.1.2** Guidance and resources are reviewed and updated to assist Australian Government agencies and ministers to apply the FOI Act.

✓ Achieved

We consulted Australian Government agencies on a revised Part 4 (Charges) of the FOI Guidelines. We will issue the final version in 2019–20.

In September 2018, we published the revised 'Agency Resource 14 — Access to Government Information — Administrative Access'.

In preparation for the release of our new website, all FOI resources were reviewed, and updated, where necessary, for migration to the new website.

**Performance measure 2.1.3** Information is provided to stakeholders that is relevant in both content and delivery.

✓ Achieved

In 2018–19, we met with many Australian Government agencies to discuss issues affecting FOI.

Our Information Contact Officers Network (ICON) comprising 527 at 30 June 2019, received 13 newsletters and updates with information about FOI. The average click-through rate for the ICON newsletter was 28%.

We also emailed a monthly newsletter to subscribers of OAICnet (known as Information Matters since May 2019). This newsletter contained news and updates about the OAIC, FOI and privacy matters and information on upcoming events.

In September 2018 and April 2019 we held ICON information sessions in Canberra to update members on recent FOI activity, trends and the OAIC's priorities. Agencies who attended the information sessions gave positive feedback on the delivery of the session and the content.

The Information Commissioner addressed access to information issues in several speeches and presentations throughout the year, including the International Conference of Information Commissioners in South Africa in March and the Australian Government Solicitor FOI and Privacy Forum in May 2019.

## Corporate Plan activity 2.2

Conduct Information Commissioner reviews.

**Performance measure 2.2.1\*** 80% of Information Commissioner (IC) reviews are completed within 12 months.

⊗ Not achieved

We completed 73.1% of IC reviews within 12 months.

The significant increase in IC review applications we received and our focus on reducing the number of cases over 12 months old prevented us from reaching our target of completing 80% within 12 months.

We used alternative dispute resolution methods and early appraisal to clarify at an early stage the issues to be resolved or the information to be provided by either party in support of their claims or submissions. This includes reviewing the material submitted by both parties and providing a preliminary view on the merits of the case to the relevant party. The party may then make further submissions or take other action as appropriate (an applicant withdrawing application or the agency revising the decision).

We facilitated the early resolution of IC reviews by helping the parties to reach an agreement about the outcome of the review in line with s 55F of the FOI Act, including by arranging teleconferences between parties where appropriate.

We used our regulatory powers under the FOI Act to ensure efficient and timely processes, including by issuing notices to agencies under ss 55E (to provide an adequate statement of reasons) and 55R (notice to produce information or documents).

The Information Commissioner made 60 IC review decisions under s 55K of the FOI Act (which are published on AustLII). These decisions help agencies interpret the FOI Act and provide guidance on the exercise of their powers and functions, by addressing novel issues and building on existing jurisprudence.

We developed the capacity of our staff to identify matters that can be resolved quickly and informally through early resolution processes, whether it be through agreement or negotiation, case appraisals or preliminary views, as well as identifying significant matters which should proceed to a s 55K decision by the Commissioner.

### Corporate Plan activity 2.3

Investigate FOI complaints and conduct Commissioner initiated investigations (CIIs).

**Performance measure 2.3.1\*** 80% of FOI complaints finalised within 12 months.

✓ Achieved

We finalised 82% of FOI complaints within 12 months of receipt during this reporting period.

We identified at an early stage whether a complaint or an IC review is the appropriate mechanism. We also used early appraisal to clarify the issues to be resolved or the information to be provided by either party in support of their claims or submissions in relation to the complaint.

**Performance measure 2.3.2\*** 80% of FOI-related CIIs finalised within eight months.

— Not applicable

Only one FOI-related CII was opened in 2018–19 and the eight-month period had not elapsed by 30 June 2019.

## Corporate Plan activity 2.4

Provide an FOI public information service.

**Performance measure 2.4.1\*** 90% of FOI written enquiries are finalised within 10 working days.

✓ Achieved

We finalised 94% of all FOI written enquiries within 10 working days in 2018–19.

This is an improvement in response times from 2016–17 and 2017–18, when 88% of all written enquiries were finalised within 10 working days. During this reporting period, the FOI team focused on improving the processes for responding to FOI enquiries. As a result, the timeliness of the FOI team's response to FOI enquiries has improved.

**Performance measure 2.4.2** New community, legal and other networks are identified for targeted promotion of the public information service.

✓ Achieved

Some of our staff attended the National Association of Community Legal Centres conference in Sydney in August 2018 and promoted information access rights to staff from community legal centres from across Australia.

We held two ICON information sessions in Canberra — one in September 2018 and the other in April 2019.

Information access issues, recent decisions and resource updates were highlighted for agency staff and members of the public throughout the year in regular OAIcnet (from May 2019 called 'Information Matters') and ICON email newsletters.

The Information Commissioner made the keynote address at the Australian Government Solicitor's FOI and Privacy Forum in Canberra on 17 May 2019. During this reporting period, members of the FOI team also participated in FOI practitioner forums that the Australian Government Solicitor hosted.

To celebrate Right to Know Day on 28 September 2018, we launched our first Right to Know Day digital campaign, which included three short videos.

Staff also celebrated Right to Know Day with an information booth during the morning transport peak period in Wynyard Park, Sydney, a major public transport hub area.

**Performance measure 2.4.3** Website content is regularly reviewed and updated to support our public information service.

✓ Achieved

We released a new website for public review in June 2019 (see performance measure 1.7.4).

## Corporate Plan activity 2.5

Promote awareness and understanding of information access rights in the community.

**Performance measure 2.5.1** Media and social media mentions about information access rights increase.

✓ Achieved

During this reporting period there were 334 online media mentions (2017–18: 345) and 556 social media mentions of information access rights and the OAIC (2017–18: 428), resulting in a total of 890 mentions (2017–18: 773).

The work that we did to achieve these mentions included:

- conducting a campaign for Right to Know Day 2018, which included relaunching the Right to Know website
- creating three videos for Right to Know Day, two for the public and one for Australian Government FOI contact officers
- using Twitter to highlight Information Awareness Month (May 2019)
- responding to 13 media inquiries about FOI issues
- increasing our international engagement
- participating in the Association of Information Access Commissioners (AIAC).

**Performance measure 2.5.2** The OAIC's website is accessible to the community and content about information access rights is regularly reviewed and updated.

✓ Achieved

We released a new website for public review in June 2019 (see performance measure 1.7.4).

## Privacy

The Privacy Act requires Australian Government agencies and private sector organisations covered by the Privacy Act to follow a set of rules when collecting, using and storing an individual's personal information. 'Personal information' is any information that is about an individual. The most obvious example is an individual's name — other examples include their address, their date of birth, a photo of their face, or a record of their opinion and views. Any information that is about an identifiable individual is personal information.

### Australian Privacy Principles

The Privacy Act includes 13 Australian Privacy Principles (APPs), which set out standards for business and government agencies managing personal information.

APP 1 — Open and Transparent Management of Personal Information

APP 2 — Anonymity and Pseudonymity

APP 3 — Collection of Solicited Personal Information

APP 4 — Dealing with Unsolicited Personal Information

APP 5 — Notification of the Collection of Personal Information

APP 6 — Use or Disclosure of Personal Information

APP 7 — Direct Marketing

APP 8 — Cross-Border Disclosure of Personal Information

APP 9 — Adoption, Use or Disclosure of Government Related Identifiers

APP 10 — Quality of Personal Information

APP 11 — Security of Personal Information

APP 12 — Access to Personal Information

APP 13 — Correction of Personal Information

## Privacy enquiries

The OAIC offers a free public information service on privacy-related matters. Our service is mainly delivered through handling phone and written enquiries.

During this reporting period, we experienced a 10% decrease in privacy enquiries from 2017–18, consistent across both phone and written enquiries. We answered 13,457 phone enquiries about privacy matters and responded to 3,966 written privacy enquiries. We also helped with 22 in-person privacy enquiries.

We significantly improved our response time for written privacy enquiries. During this reporting period, we responded to 92% of written privacy enquiries within 10 working days, up from 74% in 2017–18.

We continued to receive a broad range of enquiries from the community. More than 60% of all phone enquiries about privacy matters concerned the operation of the APPs. We also continued to receive a significant proportion of enquiries about credit reporting and the new NDB scheme.

As a part of our Memorandum of Understanding (MOU) with the Australian Capital Territory (ACT) Government we continued to provide privacy services to ACT public sector agencies, including responding to enquiries from the public about the *Information Privacy Act 2014* (ACT) (Information Privacy Act) and its Territory Privacy Principles (TPPs).

Examples of privacy enquiries handled during this reporting period are described in Case Studies 2.1 and 2.2.



### Case Study 2.1: A business owner responds to a data breach

A business owner contacted the OAIC after discovering a staff member had stolen the credit card details of some clients and used this information to run up a bill of more than \$10,000. The business owner had reported the matter to the police but was seeking advice about their obligations under the Privacy Act.

One of our enquiries officers discussed with the business owner the nature of their business and discovered that the business was a private health service provider. As a private health service provider, the business, even though a small business, must follow the APPs.

The enquiries officer gave the business owner information on APP 11 Security of Personal Information and advised that the data breach may be notifiable under the NDB scheme. They also referred the business owner to our website for guidance on the NDB scheme, which may help the business to assess the data breach and mitigate the risk to the individuals whose personal information was involved.

### Case Study 2.2: An individual seeks access to his personal information

An individual involved with an organisation became aware a complaint had been made about him to the organisation. The individual contacted us to ask if he could put in a FOI request to the organisation to find out who had submitted the complaint and what it was about.

One of our enquiries officers explained to the individual that the Commonwealth FOI legislation applied to Australian Government agencies not private organisations; however, under APP 12 — Access to Personal Information, he had the right to access the personal information that the organisation held about him.

The enquiries officer also advised the individual that while he could put in a request to the organisation for access to his personal information under APP 12 the organisation would need to consider whether giving access may have an unreasonable impact on the privacy of the individual who made the complaint and so he may not be entitled to any information about that individual, such as their name.

## Issues raised in privacy enquiries

During this reporting period the most common privacy enquiries we received were about the use and disclosure of personal information (APP 6), followed by access to an individual’s own personal information (APP 12) and then various exceptions to the APPs (see Table 2.1).

**Table 2.1: Phone enquiries related to the APPs\***

Issue raised in phone enquiry	Number
APP 1 — Open and Transparent Management of Personal Information	84
APP 2 — Anonymity and Pseudonymity	9
APP 3 — Collection of Solicited Personal Information	938
APP 4 — Unsolicited Personal Information	16
APP 5 — Notification of the Collection of Personal Information	593
APP 6 — Use or Disclosure of Personal Information	1,461
APP 7 — Direct Marketing	154
APP 8 — Cross-Border Disclosure of Personal Information	70
APP 9 — Adoption, Use or Disclosure of Government Related Identifiers	8
APP 10 — Quality of Personal Information	85
APP 11 — Security of Personal Information	1,077
APP 12 — Access to Personal Information	1,390
APP 13 — Correction of Personal Information	110
Exceptions	1,176
General enquiries	1,284

\* There may be more than one issue handled in an enquiry.

We also handled questions about other privacy issues, reflecting the broad range of matters the OAIC regulates. Table 2.2 categorises these enquiries.

Table 2.2: Phone enquiries on other privacy matters\*

Issue raised in phone enquiry	Number
Credit reporting	688
Notifiable Data Breaches scheme	640
Spent convictions	105
My Health Record	103
Data breach notification (voluntary)	70
Tax file numbers	39
Territory Privacy Principles (ACT)	31
Privacy codes	9
Healthcare identifier	9
Data matching	6
National Privacy Principles	3
Consumer Data Right or open banking	2
Student identifiers	1

\* There may be more than one issue handled in an enquiry.

## Privacy complaints

During this reporting period we continued to provide an effective complaints service — conciliating, investigating and resolving complaints individuals made to the OAIC about the possible mishandling of their personal information.

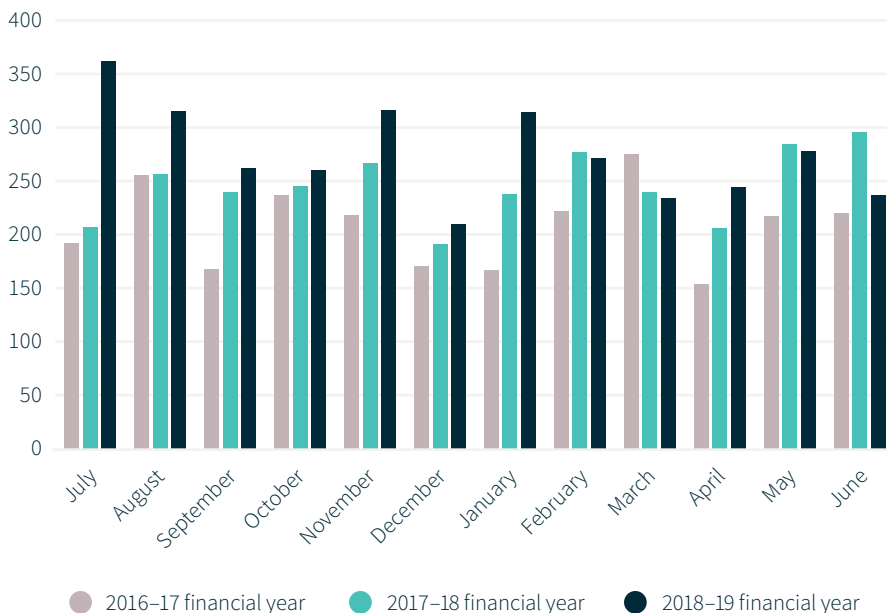
We can consider complaints by individuals about alleged interference with their privacy under the APPs, any registered APP code and consumer credit reporting. We can also consider complaints about the handling of other information such as: tax file numbers; spent convictions; data matching; healthcare identification information, including My Health Record.

In 2018–19, we received 3,306 privacy complaints (see Figure 2.1). This is a 12.1% increase on the number of privacy complaints we received in 2017–18 and follows the recent trend (2017–18: 18% increase; 2016–17: 17% increase). Consumers are increasingly aware of their privacy rights, including their right to make a complaint to the OAIC, which has contributed to the overall significant upward trend in number of complaints we have received since 2015–16.

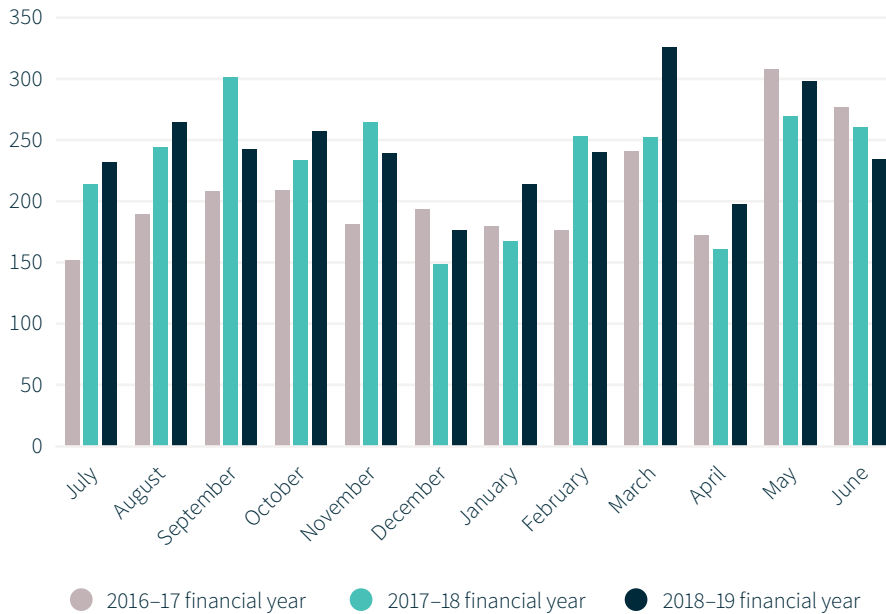
The start of the NDB scheme and the European Union’s General Data Protection Regulation in 2018 helped to focus attention on privacy. This focus was maintained during this reporting period with the transition of the My Health Record system to an opt-out system, the ACCC’s inquiry into digital platforms, and several high-profile data breaches. The national and international focus on privacy has contributed to improved awareness about obligations to protect personal information under the Privacy Act and added to the substance and complexity of many matters brought to us to investigate.

While managing this significant increase in privacy complaint numbers, we finalised 2,920 complaints in 2018–19 (see Figure 2.2). This is a 5.6% increase on the number of complaints we closed last financial year and follows substantial increases in the previous two financial years as a result of making our processes more efficient and applying our resources more effectively (2017–18: 11% increase; 2016–17: 22% increase).

**Figure 2.1: Privacy complaints received each month during the last three financial years**



**Figure 2.2: Privacy complaints closed each month during the last three financial years**



As part of our MOU with the ACT Government, we continued to provide privacy services to ACT public sector agencies including handling privacy complaints under the Information Privacy Act.

## Issues raised in privacy complaints

The majority (71.1%) of privacy complaints we received were about the handling of personal information under the APPs. The most common issues raised in these complaints were:

1. Use or disclosure of personal information (APP 6)
2. Security of personal information (APP 11)
3. Access to personal information (APP 12)
4. Collection of solicited personal information (APP 3)
5. Quality of personal information (APP 10).

During this reporting period, only 10.4% of the privacy complaints we received were about credit reporting — a decrease from the last two financial years (2017-18: 14%; 2016-17: 16%). This decrease reflected the continuing role of external dispute resolution schemes in resolving complaints about credit reporting matters.

More information is available in Appendix D.

Sectors

Privacy complaints can occur in a broad range of sectors. The top six sectors complained about are consistent with those in 2017–18 and 2016–17, except for complaints about credit reporting bodies, which was overtaken by online services (see Table 2.3 and Case Study 2.3).

**Table 2.3: Top 10 sectors by privacy complaints received**

Sector	Number
Finance (including superannuation)	418
Australian Government	389
Health service providers	327
Telecommunications	240
Retail	176
Online services	172
Credit reporting bodies	156
Personal services (includes employment, childcare and vets)	135
Real estate agents	131
Debt collectors	92

Case Study 2.3: Disclosure of personal information by telecommunication providers

The complainant became aware that her personal information had been inappropriately disclosed by a telecommunications provider to a public directory. The complainant was unclear which party was at fault: the telecommunications provider or the publisher of the public directory. The complainant had been the victim of domestic violence and the disclosure of her information in the public directory had adverse consequences and put her safety at risk.

We investigated and conciliated the matter. Both respondents acknowledged they had interfered with the complainant’s privacy and each gave the complainant \$20,000 in compensation.

## Resolving privacy complaints

In 2018–19, the average time we took to close a privacy complaint was 4.4 months. This compares to 3.7 months in 2017–18 and 4.7 months in 2016–17.

Our early resolution process, which we introduced in 2017–18, aims to see if a resolution can be achieved between the parties soon after the complaint is lodged. Our Early Resolution team finalised 64.5% of all privacy complaints in 2018–19, an improvement on 2017–18 when that team closed 53% of all privacy complaints.

When we cannot resolve a privacy complaint using the early resolution process, we make further inquiries and conciliate and/or investigate the matter.

Where we resolved complaints through conciliation, we achieved positive outcomes: either through the shuttle conciliation our Early Resolution team conducted or the formal conciliation conferences our Investigations team undertake. In many cases, parties advised the case officer of a high level of satisfaction with the outcome they had achieved together.

We support our staff to resolve complaints through providing conciliation training. We have a number of staff involved in conciliation, including senior staff, accredited under the National Mediator Accreditation Standards.

During this reporting period we closed 95.1% of all complaints within 12 months (2017–18: 97%).

In 2018–19, the main remedies we achieved in resolving privacy complaints were:

1. Record amended
2. Access provided
3. Other or confidential
4. Apology
5. Compensation.

See Case Studies 2.4 to 2.7. More information is available in Appendix D.

#### Case Study 2.4: Complaint about a false profile on a dating platform

The complainant became aware that a false profile, including their photos and personal details, had been created on the respondent's dating platform.

We made inquiries with the respondent. The respondent conducted several searches to attempt to locate the profile in question and determined that it had been deleted, possibly by the individual who created the account. The respondent advised that when they receive a complaint of this nature their practice is to locate and delete any accounts that appear to be fraudulent. The respondent also told the complainant what steps can be taken if a similar issue arises in the future. For example, the complainant could contact the respondent's privacy team directly or use their app's reporting tools.

#### Case Study 2.5: Disclosure of sensitive information by a medical centre

The complainant became aware that the respondent, a medical centre, had disclosed their sensitive medical information to their spouse without their consent.

We successfully conciliated the matter. The respondent gave the complainant a formal apology prepared by the doctor who was responsible for the disclosure. The doctor also got advice and privacy education material from their insurer, and in turn, carried out a training seminar for other practitioners working at the medical centre.

#### Case Study 2.6: Disclosure of personal information by a retail store

The complainant discovered that the respondent, a retail store, disclosed their personal information to a third party who fraudulently impersonated the complainant.

We resolved the matter by conciliation. The respondent apologised to the complainant, strengthened their identity verification processes and paid:

- for the complainant's subscription to a credit and identity protection service and mail re-direction
- for counselling sessions for the complainant
- \$5,000 compensation to the complainant.



### Case Study 2.7: Failure to ensure the security of personal information by a superannuation fund

The complainant alleged that the respondent, a superannuation fund provider, inadvertently included his welcome letter in correspondence they sent to another customer. The letter included the complainant's name, age, account number, address, account balance and investments.

We resolved the matter by conciliation. The respondent apologised to the complainant, implemented additional security measures and paid \$1,500 compensation.

## Community and sector engagement

An important part of our role is interacting with key industry and community stakeholders, including government bodies and external dispute resolution schemes, about recurring or significant issues arising in complaints.

### External dispute resolution schemes

The Information Commissioner can recognise an external dispute resolution scheme to handle particular privacy-related complaints (s 35A of the Privacy Act). The external dispute resolution schemes that are recognised are:

- Australian Financial Complaints Authority
- Energy & Water Ombudsman NSW
- Energy & Water Ombudsman SA
- Energy and Water Ombudsman (Victoria) Limited
- Energy & Water Ombudsman Queensland
- Energy and Water Ombudsman Western Australia
- Public Transport Ombudsman Limited (Victoria)
- Telecommunications Industry Ombudsman Limited
- Tolling Customer Ombudsman.

## Community engagement

For PAW (12 to 18 May 2019), the OAIC produced a podcast with Legal Aid NSW in which our staff were interviewed about credit reporting.

During this reporting period, we continued to use social media to promote privacy awareness. For example, we used Twitter and Facebook to raise awareness about the privacy controls available in My Health Record and to encourage Australians to use them.

## Determinations

Under s 52 of the Privacy Act, the Commissioner may make determinations in relation to privacy complaints. The Commissioner may also make determinations in relation to privacy CILs. The Commissioner must make these determinations personally, that is, the decision cannot be delegated.

In 2018–19, the Commissioner made three privacy determinations. One of these determinations included findings that the respondent had not interfered with the individual's privacy. This complaint was dismissed under s 51(1)(a) of the Privacy Act. See Determinations 2.1 to 2.3.

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### **Determination 2.1: 'QP' and Commonwealth Bank of Australia Ltd (Privacy) AICmr 48 (28 June 2019)**

The Commissioner found that the Commonwealth Bank of Australia Limited (CBA) interfered with the complainant's privacy by using and disclosing personal information about the complainant which was inaccurate, out-of-date or incomplete and in breach of APP 10.2.

In this instance, the Commissioner declared under s 52(2)(b)(ii) that CBA issue a written apology to the complainant acknowledging their interference with the complainant's privacy and declared under s 52(1)(b)(iii) that CBA pay the complainant \$15,000 for non-economic loss suffered.

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### **Determination 2.2: 'QF' and Others and Spotless Group Limited (Privacy) [2019] AICmr 20 (28 May 2019)**

The Commissioner found that Spotless Group Limited (Spotless) interfered with the complainants' privacy by improperly disclosing, through their related entity Cleanevent, the complainants' personal information to the Australian Workers' Union, in breach of National Privacy Principle (NPP) 2. The Commissioner also found Spotless failed to take reasonable steps to protect the complainants' personal information from misuse and unauthorised disclosure, in breach of NPP 4.

In this instance, the Commissioner declared under s 52(2)(b)(ii) that Spotless give each complainant a written apology acknowledging their interference with the complainants' privacy and the distress it caused, and that Spotless engage an independent reviewer with privacy expertise to undertake a review of Spotless's current privacy compliance procedures, policies and processes, as well as those of Spotless's subsidiaries, and give the Commissioner a copy of the reports from the independent review.

The Commissioner also declared under s 52(1)(b)(iii) that Spotless pay each complainant compensation between \$3,000 and \$6,000 for non-economic loss suffered.

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**Determination 2.3: 'QD' and Dr 'QE' and Idameneo (No.123) Pty Limited (Privacy) [2019] AICmr 17 (3 May 2019)**

The complainant alleged that Idameneo (No. 123) Pty Limited (Idameneo) and Dr QE had interfered with their privacy by failing to give access to personal information on request, in breach of APP 12.1. The complainant also alleged the respondents had failed to take reasonable steps to give access to the information in a way that met the party's needs, and failed to give reasons for their refusal in breach of APP 12.5 and APP 12.9.

The Commissioner found that Idamenao and Dr QE could rely on the exception at APP 12.3(a) to refuse access. APP 12.3(a) provides that an entity is not required to give access where the entity reasonably believes that giving access would pose a serious threat to the life, health or safety of any individual.

The Commissioner determined that the respondents gave sufficient consideration to alternative means of access and that the steps taken by the respondents were reasonable in the particular circumstances, finding no breach of APP 12.5.

The Commissioner also considered that although the respondents had not yet given the complainant a written notice of refusal of access, the 'reasonable time' limit had not yet expired, finding no breach of APP 12.9.

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## Data breach notifications

### NDB scheme

The NDB scheme commenced on 22 February 2018. Under the NDB scheme, Australian Government agencies and private sector organisations with existing personal information security obligations under the Privacy Act must notify individuals who are likely to be at risk of serious harm as a result of a data breach. The OAIC must also be notified (see Table 2.4).

Our responsibilities under the NDB scheme include:

- receiving notifications of eligible data breaches
- encouraging compliance with the NDB scheme, including handling complaints and taking regulatory action in response to instances of non-compliance
- offering advice and guidance to regulated organisations and informing the community about how the NDB scheme operates.

We reviewed each notice received under the NDB scheme to consider whether the data breach had been contained, that the organisation or agency had taken reasonable steps to mitigate the impact of the data breach on the individuals at risk of serious harm, and that the organisation or agency was taking reasonable steps to minimise the likelihood of a similar data breach occurring again. The Commissioner's new powers under the NDB scheme include the discretion to direct an entity to notify individuals of eligible data breaches or declare that notification does not need to occur or can be delayed.

The first 12 months of the NDB scheme saw a 733% increase in the number of data breach notifications, compared to those received under the previous voluntary scheme. This is consistent with international trends in jurisdictions with comparable mandatory data breach notification schemes and shows that organisations and agencies were aware of their obligations and engaging with the requirements of the NDB scheme.

As well as quarterly statistics reports, in May 2019 we published the *Notifiable Data Breaches Scheme 12-Month Insights Report*, which gives a detailed overview of the first year of the NDB scheme's operation. We have also jointly published with the Australian Cyber Security Centre a resource for organisations and agencies on tips to mitigate the risk of data breaches.

Case Studies 2.8 and 2.9 describe some data breaches we have handled during this reporting period.

### Case Study 2.8: Human error

In preparation for a product launch, an employee made an unintended change to an organisation's system configuration. This resulted in customers being able to view details for other customers when activating their account online. The data breach mainly affected contact information, but in some instances also included passport or driver licence information.

The organisation notified affected individuals by text message and offered to pay the cost of their passport being reissued or setting up a credit-monitoring service.

To prevent reoccurrence of a similar data breach, the organisation took a range of steps, including introducing additional reviews for its content delivery network and implementing system configuration changes via an application programming interface.

### Case Study 2.9: Cyber-related incident

An organisation detected suspicious activity on several customer accounts. They investigated and found that some accounts had been accessed without authorisation using correct credentials. The investigation concluded that the incident was not a result of a vulnerability in the organisation's systems but occurred due to 'credential stuffing', where previously compromised credentials are used to gain unauthorised access to systems via large-scale automated log-in requests.

The organisation informed affected individuals that their personal information including contact details, date of birth and membership number had been compromised and offered identity and cyber support services at no cost.

In response to the incident, the organisation reset passwords on all affected accounts, implemented additional security measures to detect and mitigate malicious traffic and undertook continuous system monitoring.

Voluntary data breaches

Prior to the introduction of the NDB scheme, we administered a voluntary data breach notification scheme. This scheme allowed organisations and agencies to self-report possible data breaches to us. We continued to register voluntary data breach notifications for incidents that do not fall within the scope of the NDB scheme (see Table 2.4). These included data breaches that occurred prior to 22 February 2018, incidents that did not meet the threshold of the NDB scheme, and data breaches that did not involve organisations or agencies the NDB scheme regulates.

**Table 2.4: NDB, voluntary and mandatory My Health Record notifications**

Year	2016–17	2017–18	2018–19
Notifiable data breaches	–	305	950*
Voluntary notifications	114	174	175
Mandatory notifications ( <i>My Health Records Act 2012</i> )	35	28	35
<b>Total</b>	<b>149</b>	<b>507</b>	<b>1,160</b>

\* Where data breaches affect multiple entities, we may receive multiple notifications relating to the same data breach. Notifications to us about the same data breach incident are counted as a single notification in this number. End-of-year statistics may differ from quarterly publication statistics.

In 2018–19, the number of voluntarily reported data breaches remained consistent with the previous financial year and represented a 53.5% increase on voluntary data breaches reported in 2016–17, prior to the introduction of the NDB scheme.

The consistent number of voluntary notifications can be explained, in part, by our activities in engaging with stakeholders about the requirements of the NDB scheme, along with global regulatory developments which focused on the importance of understanding and responding to data breaches, and the domestic focus on transparency and good governance arising from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Given this significant increase in mandatory and voluntary notifications, we did not meet our overall target for finalising data breach notifications, with 79% of notifications under the NDB scheme finalised within 60 days and 66.1% of voluntary data breach notifications finalised within 60 days.

We also administered a mandatory scheme for digital health data breaches. See Table 4 and the *Annual Report of the Australian Information Commissioner’s Activities in Relation to Digital Health 2018–19*, which will be available on our website no later than 28 November 2019.

# Privacy Commissioner initiated investigations

Section 40(2) of the Privacy Act allows the Commissioner to investigate an act or practice that may be an interference with privacy on the Commissioner’s own initiative. This power is used to investigate possible interferences with privacy that are of concern but are not in direct response to an individual privacy complaint.

A Privacy Commissioner initiated preliminary inquiry or investigation (CII) is conducted in response to an incident of significant community concern or discussion or notification from a third party about potentially serious privacy issues, or result from a notification about a data breach. Our key objective in undertaking Commissioner initiated preliminary inquiries or an investigation is improving the privacy practices of the organisation or agency involved.

During this reporting period, we opened preliminary inquiries or and/or an investigation in relation to 15 matters (see Table 2.5). At 30 June 2019, 10 of these matters and 12 matters from 2017–18 were ongoing.

**Table 2.5: Privacy Commissioner initiated investigations**

Year	Number of CIIs
2016–17	29
2017–18	21
2018–19	15

## Privacy assessments

During this reporting period, we assessed privacy practices in the finance, telecommunications and government sectors, as well as the digital health sector.

We used a range of methods to conduct our assessments, such as comprehensive and in-depth review of policy documents, interviews with staff and site inspections. Consistent with last financial year, the businesses or government agencies we assessed accepted all our recommendations or planned to act on them.

## Loyalty programs

During this reporting period we followed up on recommendations and suggestions we made in our 2016 loyalty program assessments of Woolworths Limited (Woolworths) and Coles Supermarkets Australia (Coles) with the following results:

- Woolworths provided evidence to show that they had adopted all our suggestions.
- Coles provided evidence to show that they had implemented our recommendation.
- Coles adopted several of our suggestions and gave adequate reasons where they did not adopt one of our suggestions.

## Finance

In 2018–19 we assessed the privacy policies of 20 organisations in the finance sector that use the Document Verification Service (DVS) for identity verification. We considered whether the privacy policy of each organisation was clearly expressed, available, up-to-date and contained the content required for the purposes of APP 1.3 to 1.5. We finalised these assessments during this reporting period and made a total of 40 recommendations.



## Telecommunications

We began a series of assessments in 2017–18 to see if certain telecommunications service providers are meeting their information security obligations under APP 11 — Security of Personal Information, for the personal information they are required to retain under the data retention scheme that came into full effect on 13 April 2017. In 2017–18 we conducted the fieldwork for two assessments. We conducted the fieldwork for two more assessments in this series in 2018–19. We will finalise this series of assessments in 2019–20.

## Government

### Unique student identifier

In 2018–19, under our MOU with the Department of Education and Training acting through the Student Identifiers Registrar (the Registrar), we assessed how the Unique Student Identifiers (USI) Office, acting on behalf of the Registrar, managed privacy controls for the USI Transcript Service. Our assessment considered the USI Office's practices, procedures and systems to make sure they complied with APP 1.2. This was the first assessment to consider the application of the Privacy Code. We did not identify any privacy risks that resulted in recommendations in this assessment.

We also followed up on the implementation of recommendations made in our 2016 assessment of how the USI Office handled personal information. We were satisfied that the USI Office had implemented the recommendations.

### ACT Government

Under our MOU with the ACT Government, in 2017–18 we conducted an assessment of Housing and Community Services ACT. The assessment is examining whether Housing ACT is:

- using and disclosing personal information in line with their TPP 6 obligations
- taking reasonable steps to secure their personal information holdings as required by TPP 11

We will complete this assessment in 2019–20.

In 2018–19 we conducted an assessment involving 10 ACT Government agencies. This assessment is outlined in the *Memorandum of Understanding with the Australian Capital Territory for the Provision of Privacy Services 2018–19 Annual Report*, which is available on our website no later than 22 October 2019.

More information is available in Appendix C.

## Data matching

We perform several functions to help government agencies to understand their privacy requirements and adopt best privacy practice when undertaking data-matching activities.

Data matching is the process of bringing together data sets that come from different sources and comparing those data sets with the intention of producing a match. Several government agencies use data matching to detect non-compliance, identify instances of fraud and recover debts owed to the Australian Government. For example, to identify individuals or businesses that may be under-reporting income or turnover, the Australian Taxation Office (ATO) may match tax return data with the data provided by banks.

Government agencies that carry out data-matching activities must comply with the Privacy Act. Data matching raises privacy risks because it involves analysing personal information about large numbers of people, the majority of whom are not under suspicion of non-compliance.

### Statutory data matching

The Information Commissioner has statutory responsibilities under the *Data-matching Program (Assistance and Tax) Act 1990* (Data-matching Act). The Data-matching Act authorises the use of tax file numbers in data-matching activities by the Department of Human Services (DHS), the Department of Veterans' Affairs and the ATO. In previous financial years, we have inspected DHS's data-matching records to make sure they comply with the requirements of the Data-matching Act. Agencies continue to rely less on data matching using tax file numbers, so this financial year we again focused on providing advice and oversight of data-matching activities outside the Data-matching Act.

### Enhanced Welfare Payment Integrity

The Enhanced Welfare Payment Integrity — non-employment income data-matching measure was announced in the 2015–16 Mid-Year Economic and Fiscal Outlook (MYEFO). It increases DHS's capability to conduct data matching to identify non-compliance by welfare recipients. In 2017–18, we conducted two privacy assessments of DHS's handling of personal information. The first assessment looked at the Non-Employment Income Data Matching (NEIDM) program. The second assessment examined the Pay-As-You-Go (PAYG) program. During this reporting period, we finalised the NEIDM program assessment. We will finalise the PAYG program assessment in 2019–20.

During this reporting period we also conducted two privacy assessments which looked at how DHS secures the personal information used in the NEIDM and PAYG programs and at the role of the ATO as a source of data for DHS's data-matching activities. We will finalise both assessments in 2019–20.

## Data-matching under the voluntary guidelines

We administer the Guidelines on Data-matching in Australian Government Administration, which are voluntary guidelines to help government agencies adopt appropriate privacy practices when undertaking data-matching activities not covered by the Data-matching Act. This financial year we reviewed 13 data-matching program protocols submitted by matching agencies including the ATO, the Department of Home Affairs and the DHS.

## Digital health assessments

Health information is considered particularly sensitive. This sensitivity has been recognised in the *My Health Records Act 2012* (My Health Records Act) and *Healthcare Identifiers Act 2010*, which regulate the collection, use and disclosure of personal information, and give the Information Commissioner a range of enforcement powers. This sensitivity is also recognised in the Privacy Act which treats health information as 'sensitive information'.

We initiated three assessments relating to the My Health Record system in 2018–19 and continue to progress two assessments that began in the previous financial year. See the *Annual Report of the Australian Information Commissioner's Activities in Relation to Digital Health 2018–19*, which is available on our website no later than 28 November 2019.

## Advice for businesses and agencies

Our teams provided advice for businesses and Australian Government agencies on their obligations under the Privacy Act. We also helped businesses and agencies achieve best practice in their approach to privacy management.

During this reporting period we issued advice on a variety of matters, including:

- adoption, use and disclosure of government related identifiers
- Australian Government Privacy Code
- credit reporting
- data breach notification requirements, including the NDB scheme
- de-identification and re-identification

- digital identity systems
- direct marketing
- draft CDR legislation, rules and technical standards
- government data matching
- higher education proposals affecting the handling of information about students
- law enforcement and national security
- the My Health Record system
- new and emerging technologies
- online communications and privacy
- privacy and international agreements
- privacy and security, as part of the Attorney-General's Department's reforms to the Protective Security Policy Framework
- telecommunications.

We also drafted submissions on issues such as:

- artificial intelligence
- Australian Government data sharing
- CDR draft legislation (see Case Study 2.10)
- cooperative intelligent transport systems and automated vehicle data
- digital platforms
- human rights and technology
- identity information
- the My Health Record system
- telecommunications.

### Case Study 2.10: Consumer Data Right regulatory framework

The CDR is a right for consumers to access particular data in a readily usable form and to direct a business to transfer that data securely to a data recipient. It aims to give consumers greater control over how their data is used and disclosed in order to create more choice and competition in sectors of the economy the Treasurer designates.

In 2018–19, we gave privacy advice to the Treasury, the ACCC and CSIRO's Data61 in the course of their respective development of the CDR legislation, rules and technical standards.

In August 2018, the Treasury released the exposure draft of the Treasury Laws Amendment (Consumer Data Right) Bill. We provided a submission on the exposure draft, acknowledging the potential of the CDR to give consumers greater choice and control over how their data is used, while highlighting important areas where further clarification or consideration of privacy issues was required. Many of our recommendations were reflected in the legislation introduced to Parliament in February 2019. We continued to engage with the Treasury throughout the development of the legislation.

We provided advice to the ACCC on their development of the CDR rules. These rules complement the legislation by defining the elements for consent, outlining the accreditation framework for data recipients and elaborating on the privacy safeguards.

We also provided advice to Data61 regarding development work for technical standards relating to consumer experience. The consumer experience standards will focus on the steps data recipients must take when seeking consent, and data holders must take when seeking authorisation, from consumers.

## Resources

We released our new website for public feedback in June 2019 (see performance measure 1.7.4).

We published a new training resource about the Privacy Code to educate Australian Government agencies about privacy best practice. We also published the *Notifiable Data Breaches Scheme: 12-Month Insights Report*, to help businesses and agencies understand the common causes of data breaches and how they can implement proactive strategies to prevent data breaches.

## Privacy legislative instruments

Under the Privacy Act, the Information Commissioner has powers to make certain legislative instruments. These legislative instruments must comply with the requirements of the *Legislation Act 2003*. They are publicly available on the Federal Register of Legislative Instruments.

### Privacy (Australian Honours System) Public Interest Determination 2018

On 5 October 2018, the Information Commissioner made Privacy (Australian Honours System) Public Interest Determination 2018. This followed an application for a public interest determination (PID) on 6 March 2018 from the Department of Home Affairs and replaced Privacy (Australian Honours System) Temporary Public Interest Determination 2018.

The PID allows the Department of Home Affairs to disclose Australian citizenship and permanent residency status information without breaching APP 6 — Use or Disclosure of Personal Information, for a period of 10 years. The disclosures can be made to the Department of the Prime Minister and Cabinet and to the Office of the Official Secretary to the Governor-General for the purposes of their consideration of nominees for awards (such as those in the Australian honours system).

### Privacy (Disclosure of Homicide Data) Public Interest Determination 2019

On 18 March 2019, the Information Commissioner made Privacy (Disclosure of Homicide Data) Public Interest Determination 2019. This followed an application for a PID on 1 November 2018 from the Australian Federal Police (AFP).

The PID allows the AFP to disclose personal information to the Australian Institute of Criminology (AIC) without breaching APP 6 — Use or Disclosure of Personal Information, for a period of seven years. The information which can be disclosed under the PID is personal information requested by the AIC about offenders and suspects in relation to homicides in the ACT, for the purposes of the AIC's research under the National Homicide Monitoring Program and the publication of aggregate findings.

This PID replaced PID No. 5 which expired on 1 October 2018.

### *National Health (Privacy) Rules 2018*

On 11 October 2018, the Information Commissioner issued the *National Health (Privacy) Rules 2018* (National Health (Privacy) Rules). These rules are required under s 135AA of the *National Health Act 1953* (National Health Act). The National Health (Privacy) Rules commenced on 1 April 2019 and repealed the previous s 135AA instrument — the *Privacy Guidelines for the Medicare Benefits and Pharmaceutical Benefits Programs* — on the same date.

The National Health (Privacy) Rules regulate the way that Australian Government agencies link and store claims information obtained under the Medicare Benefits Program and the Pharmaceutical Benefits Program.

Among other things, s 135AA(5) of the National Health Act requires that these rules prohibit agencies from storing claims information obtained under the Medicare Benefits Program and the Pharmaceutical Benefits Program on the same database.

## Privacy awareness

During this reporting period we continued to promote awareness and understanding of privacy rights in the community, with a focus on data breaches, online security, credit reporting, health information and personal data.

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*Over the past year, in Australia and around the world, privacy has come into sharper focus as one of the top priorities for organisations and the public alike.*

*Our personal information is a critical input to the economy and government agencies, and we are seeing heightened awareness of privacy issues as organisations and agencies face increasingly complex data protection challenges.*

*Privacy Awareness Week is an annual event that highlights the importance of protecting personal information, and helps organisations, agencies and the public navigate the privacy landscape.*

*For organisations and agencies, it's a reminder to review privacy practices and policies and educate their staff about information handling obligations.*

*For the public, it's an opportunity to share information and practical tips that empower people to take control of their personal information.*

*Our central message is 'Don't be in the Dark on Privacy', and over the course of the week we will explore a series of privacy priorities including data breaches, online security, your credit, health information and your data.*

*We hope that you will all join the conversation, at our events and on social media, to shine a light on these important issues.*

Angelene Falk, Australian Information Commissioner and Privacy Commissioner, in 'Welcome to Privacy Awareness Week', September 2019.

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## Reaching our audiences

We offered training and guidance on the Australian Government Agencies Privacy Code (which commenced in July 2018) to Australian Government privacy officers, including face-to-face training sessions (118 attendees).

In early 2019, we ran a social media campaign to promote the My Health Record system's privacy controls.

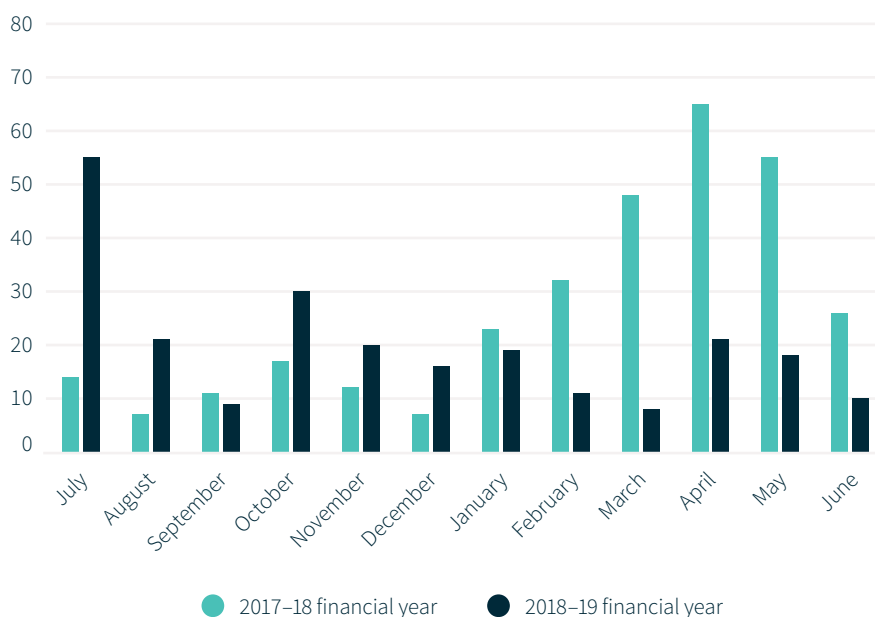
## Speaking engagements

This year we participated in 34 speaking engagements aimed at privacy professionals.

## Media

In 2018–19 we received 238 media enquiries: 219 were about privacy and 25 of those about My Health Record; the other 19 enquiries were about the OAIC and FOI.

**Figure 2.3: Media enquiries received during 2018–19**



## Freedom of information (FOI)

FOI provides a legally enforceable right of access to government documents. It applies to Australian Government ministers and most agencies, although the obligations of agencies and ministers are different.

Individuals have rights under the FOI Act to request access to government documents. The FOI Act also requires government agencies to publish specified categories of information. It also encourages them to release other information proactively.

### FOI enquiries

The OAIC handles enquiries from the public on FOI issues, including the IC review function.

During this reporting period, we experienced a 49.2% increase in FOI enquiries from 2017–18. Our Enquiries Line answered 2,051 telephone calls about FOI and responded to 824 written enquiries about FOI. We also helped with six in-person enquiries about FOI. Most enquiries were about the OAIC's jurisdiction (47%) and general processes for FOI applicants (39%), including how to make an FOI request or complaint, or seek review of an FOI decision. See Table 2.6.

**Table 2.6: FOI enquiries by issue**

Issue	Number*
OAIC's jurisdiction	1,343
General processes	1,130
Processing by agency	263
Agency statistics	236
Access to personal information	34
Access to general information	20
Vexatious application	10
Amendment and annotation	5
Information Publication Scheme	4

\* There may be more than one issue handled in an enquiry.

## IC reviews

An IC review is a review of decision made by an Australian Government agency or minister subject to the FOI Act, including a decision:

- refusing to grant access to a document wholly or in part
- where a requested a document does not exist or cannot be found
- granting access to a document where a third party has a right to object (for example, if a document contains their personal information)
- to impose charges for access to a document, including a decision to refuse to waive or reduce charges, or
- refusing to amend or annotate a record of personal information.

During this reporting period we experienced another significant increase in IC review applications, receiving 928 applications — a 15.9% increase over 2017–18. The overall increase in IC review applications since 2015–16, when we received 510, was 82%.

Despite this continuing significant increase in IC review applications, we finalised 659 IC reviews in 2018–19 (an 8% increase over 2017–18, when we finalised 610 IC reviews). We finalised 73.1% within 12 months. The increase in IC review applications and our focus on reducing the number of cases over 12 months old prevented us from reaching our target of finalising 80% of IC reviews within 12 months.

## Informal resolution

We pursued informal resolution of IC reviews where possible. We used various approaches to help resolve an IC review such as narrowing the scope of a review, providing an appraisal or preliminary view, and trying to reach agreement between the parties. In 2018–19, we finalised 599 IC reviews without a formal decision being made (90.9%).

We finalised 76 IC reviews (12.7%) after the applicant withdrew their application following:

- action the agency took to resolve the issues in the IC review (such as issuing a decision and statement of reasons in a deemed access refusal case, or making a revised decision under s 55G of the FOI Act to give the applicant access to further documents or material), or
- our appraisal of their case's merits.

We also finalised 25 IC reviews by written agreement between the parties under s 55F of the FOI Act.

## IC review decisions under s 55 K of the FOI Act

The Information Commissioner made 60 decisions under s 55K of the FOI Act in 2018–19. Of these:

- 37 decisions (61.7%) set aside and substituted the decision under review
- 4 decisions (6.7%) varied the decision under review
- 19 decisions (31.7%) affirmed the decision under review.

Of the decisions the Information Commissioner affirmed, two were revised during the IC review to give greater access to the documents sought under s 55G of the FOI Act.

Two were access grant decisions, where the Information Commissioner agreed with the agency that the documents were not exempt under the FOI Act and must be released.

The decisions we published under s 55K of the FOI Act continued to be an important part of our work. They addressed novel issues and built on existing FOI laws and judgments. They helped agencies interpret the FOI Act and guide them in exercising their powers and functions.

All IC review decisions are published on the AustLII website as part of the Australian Information Commissioner (AICmr) series.

Case Studies 2.11 and 2.15 describe IC review decisions made during this reporting period.

For more information about IC review decisions under s 55K of the FOI Act, see Appendix D, Review of FOI Decisions.

### Case Study 2.11: Jack Waterford and Department of Human Services (Freedom of information) [2019] AICmr 21 (5 June 2019)

The applicant sought access to documents the DHS generated in response to a media request he made to them and a media article he wrote in the week before making the request.

On completing the request consultation process (s 24AB of the FOI Act), the DHS refused the applicant's request on the basis that a practical refusal reason existed. They believed the request did not meet the identification requirements of s 15(2)(b) of the FOI Act (these require a request to supply enough information to enable the DHS to identify the document sought) and processing the request would substantially and unreasonably divert the DHS's resources from their other operations (ss 24AA(1)(a)(i) and 24AA(1)(b) of the FOI Act).

The Information Commissioner was not satisfied that the request consultation notice fulfilled the requirements of s 24AB of the FOI Act, because it did not give the name of a contact person and how the applicant could contact this person, as s 24AB(2)(c) requires. Also, the Information Commissioner was not satisfied the DHS had taken reasonable steps to help the applicant to revise his request and remove the practical refusal reason (s 24AB(3) of the FOI Act). The DHS's notice gave the applicant limited information to help him revise his request and from the applicant's response it was apparent that he had concerns about the steps the DHS took to help him to revise the request.

The DHS also estimated it would take 238 hours to process the request. The Information Commissioner was not satisfied that the DHS discharged its onus to justify the estimated processing time. Also, the Information Commissioner was not satisfied that the DHS had proved that processing the request would substantially and unreasonably divert the DHS's resources from its other operations.

### Case Study 2.12: Justin Warren and Department of Human Services (Freedom of information) [2019] AICmr 22 (5 June 2019)

The applicant sought access to meeting agendas, minutes and other notes for meetings held between the DHS and the Minister for Human Services or Minister for Social Services between 1 January 2016 and 31 December 2016.

On completing the request consultation process (s 24AB of the FOI Act), the DHS refused the applicant's request on the basis a practical refusal reason existed. The DHS asserted that processing the request would substantially and unreasonably divert the DHS's resources from its other operations (s 24AA(1)(a)(i)).

The Information Commissioner was not satisfied the DHS took reasonable steps to help the applicant revise the scope of his request to remove the practical refusal reason (s 24AB(3)). The applicant had tried to revise the request but was unsuccessful because he did not understand the terms the DHS used. The Information Commissioner said that where it is apparent that an applicant's attempt to revise the scope of their request doesn't remove the practical refusal reason, the contact person should consider whether they could take additional steps to help the applicant revise their request.

The DHS estimated it would take more than 130 hours to process the request because every branch of the DHS would need to conduct searches for the requested documents. During the IC review, the applicant indicated he would be willing to reduce the scope of his request in light of information the DHS supplied. The DHS then conducted searches within the revised scope and advised that they could not locate any documents. The Information Commissioner considered that when an applicant proposes a revised scope based on advice from the agency that results in no documents being found, unless there are compelling reasons not to, the agency should generally consult with the applicant about why no documents exist and help them to revise the scope of their request before making a decision about the request.

### Case Study 2.13: 'QG' and Department of Human Services (Freedom of information) [2019] AICmr 23 (5 June 2019)

The applicant sought access to: 'A copy of all communication, including emails, correspondence, phone calls, internal memos, sms and faxes between Child Support and Complex Assessment departments relating to me.'

On completing the request consultation process (s 24AB of the FOI Act), the DHS refused the applicant's request on the basis a practical refusal reason existed. The DHS asserted the request didn't meet the identification requirements of s 15(2)(b) of the FOI Act (s 24AA(1)(b) of the FOI Act).

The Information Commissioner considered whether the agency had followed the request consultation process under s 24AB of the FOI Act. The Information Commissioner was not satisfied that the DHS had taken reasonable steps to help the applicant revise the scope of the request to remove the practical refusal reason (s 24AB(3)). The applicant tried to revise the scope of the request based on the information the DHS supplied. The DHS had a very particular approach to interpreting terms the applicant used in the revised request such as 'relating to' and 'including'. The Information Commissioner said that where an agency or minister takes a very particular approach to interpreting terms an applicant uses, it may be difficult for an applicant to revise the scope of a request to remove the practical refusal reason without the agency or minister suggesting what would be a reasonable request in the circumstances. The Information Commissioner noted that the DHS proposed a revised scope of the request at the start of the IC review and it appeared that this scope could have been proposed during the request consultation process.

The Information Commissioner noted that the FOI Guidelines explain that an agency or minister must read a document request fairly, being mindful not to take a narrow or pedantic approach to its construction. The Information Commissioner was satisfied that the applicant had supplied sufficient information for the DHS to identify the documents sought (s 15(2)(b) of the FOI Act).

### Case Study 2.14: Seven Network (Operations) Limited and Australian Federal Police (Freedom of information) [2019] AICmr 32 (6 June 2019)

This is the first IC review decision to consider the application of s 46 of the FOI Act (where the disclosure of the requested documents would be a contempt of Parliament or a Court).

The applicant sought access to documents, including CCTV footage, related to an incident in the Parliament House precinct. The exemption under s46(c) of the FOI Act was applied on a basis that disclosure would infringe parliamentary privilege.

The FOI Guidelines explain that the term ‘parliamentary privilege’ refers to the privileges or immunities of the Houses of the Parliament, and the powers of the Houses to protect the integrity of their processes. The use of CCTV footage captured by the Parliament House CCTV system is subject to a code which restricts viewing, storing, accessing, releasing and disposing of CCTV footage without the approval of the President of the Senate and the Speaker of the House of Representatives (Presiding Officers).

The Information Commissioner also considered s 6 of the *Parliamentary Precincts Act 1988*, which states that the parliamentary precincts are under the control and management of the Presiding Officers. Given the authority of the Presiding Officers under the Parliamentary Precincts Act 1988 and their endorsement of the code, the Information Commissioner considered the code amounts to a rule of the Houses of Parliament that restricts the use and disclosure of CCTV footage captured in the parliamentary precincts and the act of disclosing CCTV footage contrary to the code would infringe parliamentary privilege.

The Information Commissioner was satisfied that conduct which improperly interfered with the free exercise by the House of Parliament of its authority or functions, such as the contravention of a rule or order of a House of Parliament, may constitute contempt of the parliament and infringe the privileges of the parliament.

The Information Commissioner affirmed the decision refusing access to the CCTV footage.

We have updated paragraphs 5.188 to 5.195 of the FOI Guidelines to refer to this decision.



### Case Study 2.15: Rex Patrick and Minister for Resources and Northern Australia (Freedom of information) [2019] AICmr 13 (25 March 2019)

The applicant applied to the Minister for Resources and Northern Australia for access to diary entries relating to the National Radioactive Waste Management Facility at Kimba and Hawker. The Minister refused the request under s 24A of the FOI Act because no ‘diary entries’ exist.

During the IC review, the Minister’s office accepted that the term ‘diary’ included electronic calendars and other email calendars and schedules. The Minister’s office subsequently indicated the Minister was willing to process the request because the scope of the applicant’s request included the Minister’s electronic email calendars and schedules.

The Information Commissioner was satisfied that documents within the scope of the applicant’s request did exist.

## FOI complaints

Under s 69 of the FOI Act, the Information Commissioner has power to investigate agency actions about the handling of FOI matters.

Part 11 of the FOI Guidelines explains that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation and the matter can be dealt with more appropriately and effectively in that way. Generally, an IC review is the more appropriate way for a person to seek review of the merits of an FOI decision, particularly an access refusal or access grant decision. This approach accounts for the relatively small number of FOI complaints received compared with IC review applications.

In 2018–19, we received 61 FOI complaints and closed 22. This represents a slight decrease (1.6%) in lodgements compared with 2017–18 (when 62 FOI complaints were received) and a 24% decrease in finalisations compared with 2017–18 (when 29 FOI complaints were finalised). The decrease in the number of FOI complaints finalised is primarily the result of us receiving a sustained increase in the number of IC review applications and our focus on finalising IC reviews, in particular those over 12 months old.

Of the FOI complaints finalised during this reporting period, 81.8% were closed within 12 months of receipt — meeting the OAIC’s target of closing 80% of all FOI complaints within 12 months.

As in previous years, the most common complaints about the handling of FOI matters by agencies were:

- agencies not meeting statutory timeframes
- problems with consultation under practical refusal provisions
- the imposition or amount of a charge
- poor customer service (most commonly a failure to reply to correspondence).

In 2018–19, there was an increase in the number of complaints about decision-makers not stating their name and designation in the notice of decision as s 26 of the FOI Act requires and agency administration of the IPS.

## FOI extensions of time

The FOI Act sets out timeframes within which agencies and ministers must process FOI requests.

Where an agency or minister is unable to process an FOI request within the processing period, they may request an extension of time from the FOI applicant or the Information Commissioner.

Where the applicant agrees to an extension of time in writing, the agency or minister must advise the Information Commissioner of the agreement to extend the statutory processing time as soon as practicable.

An agency or minister can apply to the Information Commissioner for an extension of time to the processing period where an agency or minister is able to demonstrate that the processing of the FOI request has been delayed because the FOI request is voluminous or complex in nature (s 15AB of the FOI Act) or where the agency or minister has been unable to process the request within the statutory timeframe and the agency or minister is deemed to have made a decision refusing the FOI request (s 15AC of the FOI Act). See Tables 2.7 and 2.8.

**Table 2.7:** FOI extension of time (EOT) notifications and requests received and closed

Year	2016–17	2017–18	2018–19
Received	4,412	3,367	3,785
Closed	4,420	3,333	3,779

During this reporting period, we finalised 84% of extension of time applications within five working days.

**Table 2.8:** FOI extensions of time (EOT) notifications and requests closed, by type

Request type	2016–17	2017–18	2018–19
Section 15AA (notification of EOT agreements between agency and applicant)	3,808	2,762	2,959
Section 15AB (request to OAIC by agency where voluminous or complex)	453	370	562
Section 15AC (request to OAIC by agency where deemed refusal decision)	112	122	178
Section 51DA (request to OAIC by agency for EOT for dealing with amendment/annotation request)	–	1	1
Section 54B (extension of the period to make an internal review request made by agency)	–	–	1
Section 54D (request to OAIC by agency for EOT where deemed affirmation on internal review)	29	38	37
Section 54T (request to OAIC for EOT for person to apply for IC review)	18	40	41
<b>Total</b>	<b>4,420</b>	<b>3,333</b>	<b>3,779</b>

## FOI vexatious applicant declarations

The Information Commissioner has the power to declare a person to be a vexatious applicant if she is satisfied that the grounds set out in s 89L of the FOI Act exist.

During 2018–19, the Information Commissioner received nine applications from agencies under s 89K seeking to have a person declared a vexatious applicant. Eight applications were finalised in 2018–19, with three declarations being made, three refused and two withdrawn.

Declarations are published on the AustLII website as part of the AICmr series.

Case Study 2.16 describes an FOI vexatious applicant declaration made during this reporting period.

### Case Study 2.16: Office of the Registrar of Indigenous Corporations and 'PW' (Freedom of information) [2019] AICmr 6 (13 February 2019)

'PW' was the subject of a vexatious applicant declaration made by a former Information Commissioner which expired on 3 June 2017. Between 26 July 2017 and 5 July 2018, PW engaged in a further 28 access actions.

In deciding whether to make the declaration, the Information Commissioner considered whether the agency had used other provisions in the FOI Act to lessen the impact of PW's access actions on its operations and whether deficiencies in the agency's FOI administration had contributed to the respondent's access actions. This included: the impact of PW's access actions on the agency's other work, the size of the agency, the resources the agency could reasonably allocate to FOI processing, the impact PW's access actions had on FOI administration in the agency and whether PW had cooperated reasonably with the agency to enable efficient FOI processing.

The Information Commissioner had regard to the parties' submissions and was satisfied the agency had established that PW had repeatedly engaged in access actions that involved an abuse of process by unreasonably interfering with the agency's operations.

The Information Commissioner decided that a declaration for three years was appropriate in circumstances where the respondent had previously been declared vexatious.

## FOI agency resources

We produced guidelines and other resources during this reporting period to promote FOI best practice and help Australian Government agencies understand their FOI obligations.

### FOI Guidelines

In June 2019, we amended Part 5 of the FOI Guidelines about the exemption in s 46 of the FOI Act (where the disclosure of the requested documents would be a contempt of Parliament or a Court) to reflect the IC review decision: *Seven Network (Operations) Limited and Australian Federal Police (Freedom of information)* [2019] AICmr 32 (6 June 2019). This was the first IC review decision to consider the exemption.

### Administrative access resource

In September 2018, we re-issued FOI Agency Resource 14: Access to Government Information — Administrative Access. We sought comments from interested stakeholders about the readability and accessibility of the revised resource.

The resource helps agencies and ministers understand administrative access and emphasises the importance of considering administrative access as an alternative to formal FOI processes. This approach is consistent with the object of the FOI Act to facilitate and promote public access to information promptly and at the lowest reasonable cost.

The resource is available on our website under FOI Guidelines, Administrative Access.

### Disclosure log determination

Section 11C of the FOI Act includes some circumstances in which an agency or minister is not required to publish information released in response to FOI requests on their website. Section 11(1)(c) of the FOI Act provides that if the Information Commissioner has made a determination under s 11C(2) of the FOI Act, an agency is not required to publish information specified in the determination.

On 28 November 2018, the Information Commissioner made a determination under s 11C(2) of the FOI Act: *Freedom of Information (Disclosure Log — Exempt Documents) Determination 2018*.

This determination establishes two circumstances in which an agency or minister is not required to publish information, in addition to those already found in s 11C of the FOI Act. The additional circumstances are:

- Information was exempt from disclosure when the agency or minister gave access to the applicant.
- Information in the document that the agency or minister would have decided was exempt at the time access was given to the applicant, if the request had been made by someone other than the applicant.

The determination is otherwise substantially the same as the previous determination and will be in effect for five years.

## Newsletters

We sent 13 newsletters and updates to FOI contact officers who signed up to our ICON members. These newsletters included news and information about FOI, information management and general OAIC updates. ICON members also received alerts including reminders for upcoming ICON events, reporting and policy updates, and summaries of recent IC review decisions.

## Events

We participated in a range of activities throughout the year to raise awareness about accessing government-held information, the role of the OAIC and our processes.

### ICON information sessions

We re-established six-monthly information sessions for information contact officers. These ICON sessions were held in Canberra in September 2018 and April 2019. Both sessions were attended by more than 70 information contact officers.

The ICON sessions provided an opportunity to network with FOI colleagues and to discuss information access issues. Examples of topics covered at ICON meetings include:

- policy and operational updates from the Information Commissioner and other key OAIC staff, including the Deputy and Assistant Commissioners
- the role of the FOI practitioner in promoting accountability and transparency

- the OpenAustralia Foundation introducing its Right to Know website
- the National Archives of Australia published a new records authority for ministerial records.

## National Association of Community Legal Centres Conference

In August 2018, staff from the OAIC attended the National Association of Community Legal Centres Conference in Sydney, where they explained the right to access government-held information to staff from community legal centres across Australia.

## Australian Government Solicitor forums

The Information Commissioner gave the keynote address at the Australian Government Solicitor's FOI and Privacy Forum in Canberra on 17 May 2019.

In her address, 'From personal information to information access rights: building a strong foundation for our democracy and digital economy', the Information Commissioner spoke about how important it is for practitioners to handle personal information in an honest and ethical way. She also canvassed the international access to information landscape, sharing insights from the International Conference of Information Commissioners in South Africa in March.

## Right to Know Day 2018

International Right to Know Day is held on 28 September each year. In 2018, we promoted the event and general awareness of information access rights with a digital campaign.

The campaign included three short videos highlighting information access themes: 'It's your right to know', 'How to make an FOI request' and '12 tips for FOI decision-makers'. These videos are available as an ongoing resource on our website and YouTube channel.

Staff also set up an information booth at Wynyard in Sydney to promote Right to Know Day on 28 September. They talked to more than 500 commuters and provided printed material about open government and the right to access government-held information.

## Media

The AIAC issued a joint media statement for Right to know Day following a meeting hosted by the OAIC in Sydney on 20 to 21 September 2018.

The statement encouraged all government agencies across Australia and New Zealand to take a proactive approach towards releasing information and documents.

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*The community's right to know is the foundation of open and accountable government. Access to the information and data held by government strengthens our democracy by promoting greater public participation and scrutiny and supporting better decision-making.*

*International Right to Know Day, held on 28 September, recognises citizens' right to access this information and reinforces the importance of transparency in building trust in government. As Information Commissioners we strive to promote and uphold the fundamental right of citizens to access government information.*

*We are also supporting information access officers in carrying out their very important role as part of the effective management of government-held information.*

Statement of Australian and New Zealand information access commissioners for International Right to Know Day 2018

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## Website

We released a new website for public feedback in June 2019 (see performance measure 1.7.4).



## IPS

Between May and August 2018, we undertook an IPS survey of all Australian Government agencies subject to the FOI Act. ORIMA Research conducted the survey on behalf of the OAIC.

The survey reviewed the operation of the IPS in each agency and gave agencies an opportunity to comply with the requirement to conduct a review under s 9 of the FOI Act. This section requires an agency to complete a review of the operation of the IPS within their agency as appropriate from time to time and within five years of the commencement of the IPS.

The final report was published in June 2019. The survey had a response rate of 82% (compared to 78% in 2012) with 190 agencies participating.

The results show the IPS continued to be an important element in ensuring information Australian Government agencies hold is managed for public purposes and is treated as a national resource.

Agency responses confirmed a continued commitment to IPS requirements and principles, although a decline was observed in the four key areas of compliance measured in both the 2012 and 2018 survey. Larger agencies generally reported higher levels of compliance with IPS requirements and better practice principles, compared with micro to small agencies.

Compliance with the IPS is an ongoing statutory responsibility for agencies subject to the FOI Act. The survey's results have helped us to identify areas where improvements can be made to further promote the proactive publication of Australian Government information.

## FOI processing statistics received from Australian Government agencies and ministers

Below is a selection of the FOI request processing statistics provided by Australian Government agencies and ministers to the OAIC. The figures have been rounded to the nearest whole number. For detailed figures, see Appendix D.

The number of FOI requests received across Australian Government agencies increased by 13% from 34,438 in 2017–18 to 38,879 in 2018–19. This increase was experienced in both requests for personal information and other (non-personal) information;

however, the increase in personal requests was more pronounced (15% higher than 2017–18) than non-personal requests (3% higher than 2017–18). The increase in requests for personal information is in large part due to the Department of Home Affairs (DHA) receiving 24% more personal requests in 2018–19 than in the previous financial year.

In 2018–19, 32,440 or 83% of all FOI requests were for documents containing personal information. This is marginally higher than in 2017–18 and 2016–17 when 82% of all requests were for personal information.

In 2018–19, the DHA, the DHS and the Department of Veterans' Affairs together continued to receive the majority of FOI requests (69% of the total). Of these, 96% were for personal information.

The percentage of FOI requests processed within the applicable statutory time period decreased from 85% in 2017–18, to 83% in 2018–19.

The percentage of FOI requests granted in full increased from 50% of all requests in 2017–18 to 52% in 2018–19 and the number of requests refused decreased from 16% of all FOI requests in 2017–18 to 13% in 2018–19.

The personal privacy exemption in s 47F of the FOI Act remains the most claimed exemption (38% of all exemptions claimed).

The total reported costs attributable to processing FOI requests in 2018–19 was \$59.85 million, a 15% increase on 2017–18 (\$52.19 million).

Australian Government agencies and ministers issued 2,225 notices advising of an intention to refuse a request for a practical refusal reason in 2018–19. This is a 47% decrease on the number issued in 2017–18. Of these requests, 77% were subsequently refused or withdrawn; that proportion was 84% in 2017–18.

There was a 7% decrease in the total charges notified in 2018–19 but a 6% increase in the total charges collected by Australian Government agencies (\$122,774).

The total number of entries added to agency website disclosure logs in 2018–19 (1,200) is 9% higher than 2017–18, when 1,104 new entries were added. However, the proportion of entries from which members of the public can directly access disclosure log documents from agency websites remains low at 59%.

There was a 12% increase in internal review applications in 2018–19. Of the 829 decisions on internal review, 429 (52%) affirmed the original decision, 91 (11%) set aside the original decision and granted access in full and 232 (28%) granted access in part.

For more information, see Appendix E.





# Part 3

## Management and accountability

Corporate governance	96
External scrutiny	98
Human resources	99
Procurement	104
Other requirements	106

## Corporate governance

Setting strategic direction, implementing effective policies and processes, and monitoring progress are key elements of our corporate governance framework.

### Enabling legislation

The Office of the Australian Information Commissioner (OAIC) was established in November 2010 as an independent statutory agency under the *Australian Information Commissioner Act 2010* (AIC Act). We are responsible for privacy functions conferred by the *Privacy Act 1988* (Privacy Act) and other laws.

We have freedom of information (FOI) functions, including the oversight of the operation of the *Freedom of Information Act 1982* (FOI Act) and review of decisions made by agencies and ministers under that Act.

We are accountable as a non-corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Our annual reporting responsibilities are under s 46 of the PGPA Act and s30 of the AIC Act. We also have a range of reporting and other responsibilities under legislation generally applicable to Australian Government authorities.

### Portfolio structure and responsible minister

The OAIC is a statutory authority within the Attorney-General's portfolio. The minister responsible is the Hon Christian Porter MP.

### Executive

During this reporting period, our Executive team, comprising the Commissioner, Deputy and Assistant Commissioners, met weekly and oversaw all aspects of our business covering corporate management and performance, finance, human resources, governance, risk management, external engagement and business planning.

## Risk management

Our risk management framework helped staff to assess risks, make informed decisions and confidently engage with risk.

Our Executive team regularly considered and reviewed the risks the agency faced and the reports on risk received from the Audit Committee.

## Fraud

Our fraud control plan, fraud control policy and guidelines were made available to all staff through internal communications channels.

## Audit Committee

Our Audit Committee assisted the Commissioner to discharge her responsibilities on the OAIC's finances and performance, risk oversight and management, and system of internal control. The Audit Committee oversaw the work of our internal auditors, ensured the annual work program was adhered to and ensured appropriate coverage of our strategic and operational risks.

The Audit Committee was chaired by a member of our Executive team and had two independent members. The independent members are employees of the National Disability Insurance Scheme Agency and the Australian Human Rights Commission (AHRC). Representatives from the Australian National Audit Office (ANAO) attend meetings of the Audit Committee as observers.

## Corporate services

We have a memorandum of understanding (MOU) with the AHRC that covers the provision of corporate services. This includes financial, administrative, information and communications technology and human resources services. We also sublease our premises in Sydney from the AHRC under this arrangement.

See Appendix C for more information on the MOU with the AHRC.

# External scrutiny

During this reporting period, there were no judicial decisions or decisions of administrative tribunals that had a significant impact on our operations.

There were no reports on our operations by the Auditor-General, a parliamentary committee or the Commonwealth Ombudsman.



## Human resources

We strove to provide a workplace that offered fulfilling and challenging work, and promoted the professional and personal development of our staff. As the national expert in both privacy and FOI regulation, we relied on a team of highly skilled and competent staff.

In 2018–19, we continued to build the capacity of existing staff, to develop the necessary skill sets to meet the heightened demands for privacy and information management for the Australian public, government agencies and wider industry.

## Our people

As a small agency in a competitive market, we continued to face challenges in recruiting and retaining skilled people. We used a number of strategies to attract talent including online and social media advertising.

During this reporting period, we had an average staffing level of 85.3. Our staff turnover was approximately 24% for ongoing staff. This involved 19 ongoing staff resigning, retiring or transferring to other Australian Government agencies. We had 20 ongoing staff join us during 2018–19. As of 30 June 2019, we had 89.7 full-time equivalent (FTE) staff, including ongoing and non-ongoing employees.

Table 3.1: Staffing profile as at 30 June 2019

Classifications	Male	Female	Full-time	Part-time	Total ongoing	Total non-ongoing	Total
Statutory office holder	–	1	1	–	–	1	1
SES Band 2	–	1	1	–	1	–	1
SES Band 1	1	1	1	1	2	–	2
Executive Level 2 (\$120,356–\$137,355)	3	11	7	7	12	2	14
Executive Level 1 (\$103,618–\$110,840)	5	22	20	7	25	2	27
APS 6 (\$82,219–\$90,539)	5	24	24	5	26	3	29
APS 5 (\$74,563–\$78,827)	4	9	10	3	7	6	13
APS 4 (\$66,881–\$71,064)	5	5	9	1	5	5	10
Total	23	74	73	24	78	19	97

Employment statistics

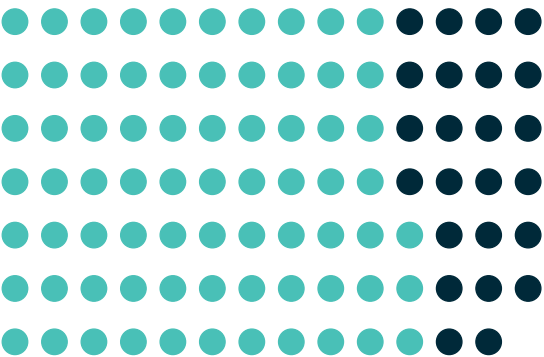
Our staff

97  
Total staff

Employment type

73  
Full-time

24  
Part-time



Gender

74  
Female

23  
Male

Diversity

31%  
Non-English speaking background

1%  
Indigenous

## Learning and development

We are committed to ongoing learning and development of our staff, recognising the importance of building and developing capabilities to meet current and future needs.

Our work is increasingly becoming more technical as the digital environment becomes more complex, and we are also seeing more complex and substantive complaints and investigations compared to previous financial years.

Staff can access a range of learning and development opportunities in line with the Australian Public Service Commission's 70:20:10 model of learning.

We provided the following components of our learning and development program for staff.

### Talking about performance

Our Performance Management and Development scheme 'Talking about performance' provided regular and formal assessment of staff members' work performance and identified learning and development needs.

### Professional skills development

Staff undertake specialised training to ensure they are continuously building on their subject-matter expertise and able to access the latest information from industry and government.

During this reporting period, relevant staff attended specialist training in decision writing, administrative law, conciliation and investigations, auditing skills, leadership and management, plain English, mental health and managing unreasonable complainant conduct.

### Study and professional membership assistance

We encouraged staff to undertake study to develop their knowledge and skills in relevant areas. Study assistance provided skilled and knowledgeable staff for our current and future requirements and supports staff in meeting their learning and development needs.

## Benefits

We offer our people the following non-salary related benefits:

- flexible working arrangements including home-based work where appropriate
- employee assistance program
- extended purchased leave
- maternity and adoption leave
- parental leave
- leave for personal compelling reasons and exceptional circumstances
- access to paid leave at half pay
- Flextime (APS staff)
- study assistance
- support for professional and personal development
- healthy lifestyle reimbursement
- screen-based eyesight testing and screen-based prescription glasses reimbursements
- influenza vaccinations.

## Workplace relations

The Fair Work Commission approved our Enterprise Agreement 2016–19 on 5 May 2016. On 7 March 2019, the Commissioner issued the Public Service (Office of the Australian Information Commissioner Non-SES Employees) Determination 2019 made under s 24(1) of the *Public Service Act 1999*. The determination commenced on 13 May 2019 and staff covered by the enterprise agreement received an increase to their existing salary and specified allowances, and will receive further increases in 2020 and 2021.

In 2018–19, no staff received performance pay. Six staff had an individual flexibility arrangement.

## OAIC Consultation Forum

The OAIC Consultation Forum provides an opportunity for our staff and their representatives to meet and consider issues relating to working at the OAIC.

## Statutory office holder and SES remuneration

The Remuneration Tribunal determined the terms and conditions of our statutory office holder. Remuneration for the Senior Executive Service (SES) officers is governed by determinations made by the Commissioner under s 24(1) of the *Public Service Act 1999*.

For information on executive remuneration, see Appendix B.

## Workplace diversity

In 2018–19, 31% of staff had a non-English speaking background and 1% identified as Indigenous.

Our Diversity Committee, during this reporting period, was led by an Assistant Commissioner and included representatives from the Regulation and Strategy Branch, Enquiries Line and Dispute Resolution Branch. The Diversity Committee was responsible for driving our wider diversity strategy and coordinating our obligations under Multicultural Access and Equity Reporting.

## Work health and safety

We shared expertise and resources on work health and safety (WHS) issues with the AHRC. Our WHS representatives were members of the joint agencies' WHS Committee. We conducted regular site inspections as a preventative measure and there were no significant incidents reported by staff during this reporting period. All new staff are provided with WHS information upon commencement and ongoing support and assistance is offered to our people.

## Procurement

During this reporting period, we complied with the Australian Government's procurement policy framework. We encouraged competition, value for money, transparency and accountability.

All procurement was conducted in line with the Commonwealth Procurement Rules to ensure the efficient, effective, economical and ethical use of Australian Government resources.

During this reporting period, no contracts were exempt from reporting on AusTender on the basis that publishing contract details would disclose exempt matters under the FOI Act. All awarded contracts valued at \$100,000 (GST inclusive) or greater contained standard clauses granting the Auditor-General access to contractors' premises.

## Consultants

We engaged consultants where we lacked specialist expertise or when independent research, review or assessment was required.

Typically, we engaged consultants to:

- investigate or diagnose a defined issue or problem
- carry out defined reviews or evaluations
- provide independent advice, information or creative solutions to assist with our decision-making.

During this reporting period, three new consultancy contracts were entered into involving total actual expenditure of \$185,543 (excluding GST). In addition, one ongoing consultancy contract was active during the period, involving total actual expenditure of \$50,000 (excluding GST).

Before we engaged consultants, we took into account the skills and resources required for the task, the skills available internally and the cost-effectiveness of engaging external expertise. All the decisions that we made relating to consultancy contracts were made in line with the PGPA Act and related regulations, including the Commonwealth Procurement Rules.

This report contains information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.

## Small business

We supported small business participation in the Commonwealth Government procurement market and engaged with small businesses wherever appropriate during our work. Small and medium enterprises (SME) and small enterprise participation statistics are available on the Department of Finance's website. We also recognised the importance of ensuring that small businesses were paid on time. Our statistics are available in the Survey of Australian Government Payments to Small Business, which is available on the Department of Employment, Skills, Small and Family Business's website.

## Other requirements

### Advertising and market research

During this reporting period, the OAIC conducted the following advertising campaign:  
Paid Facebook promotion of consumer resources explaining the privacy controls available at [oaic.gov.au](https://www.oaic.gov.au).

### Grant programs

No grant programs took place in 2018–19.

### Fraud

We have a fraud control plan, fraud control policy and guidelines which are made available to staff through internal communication channels.

### Memoranda of understanding

We received funding for specific services under a range of memoranda of understanding, see Appendix C.

### Disability reporting

The Commonwealth Disability Strategy has been overtaken by the National Disability Strategy 2010–20, which set out a 10-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high-level two-yearly report tracks progress against each of the six outcome areas of the strategy and presents a picture of how people with disability are faring. The first of these reports can be found at [dss.gov.au](https://dss.gov.au)

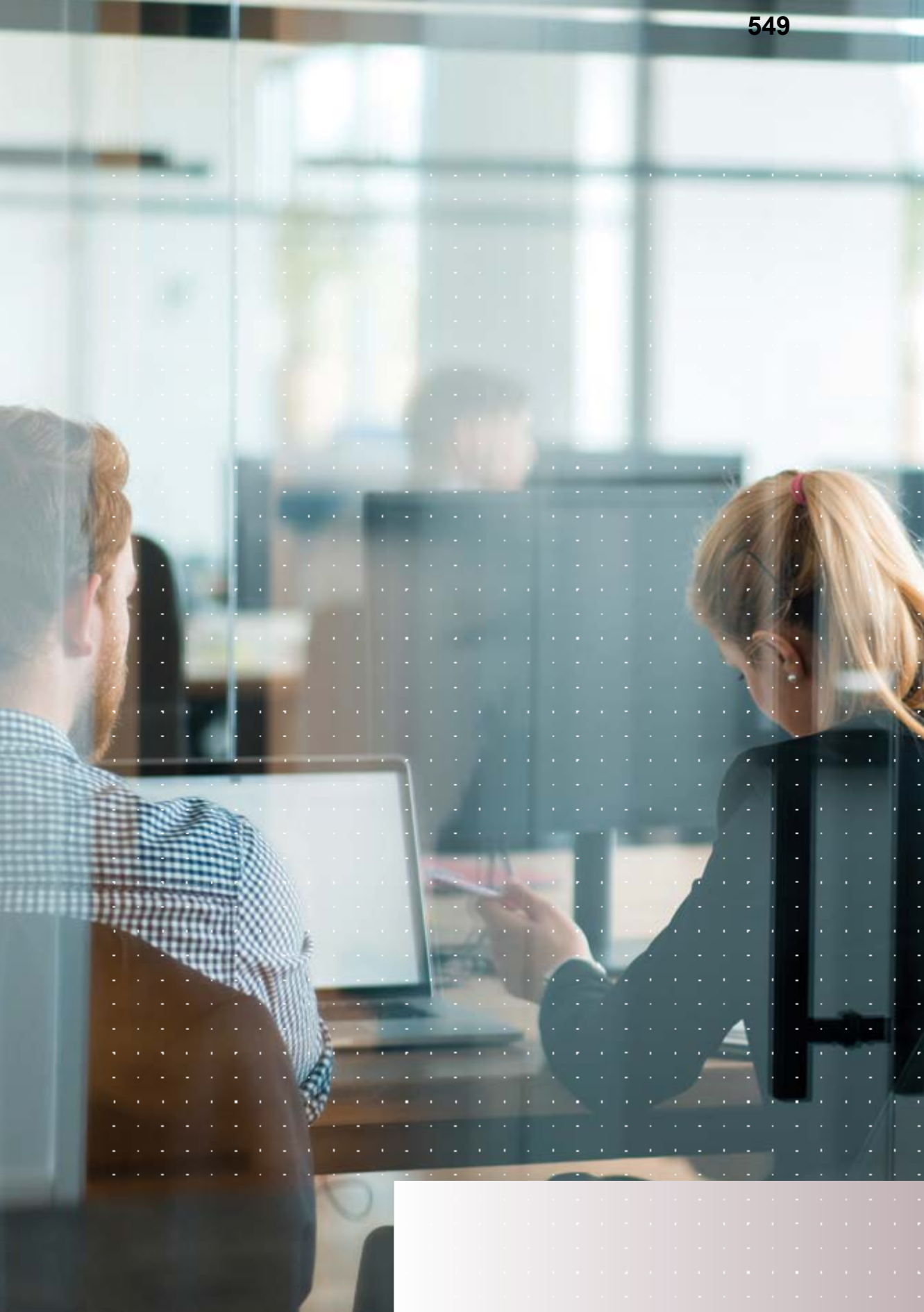


## Ecologically sustainable development and environment performance

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires us to report on how our activities accord with the principles of ecologically sustainable development. Our role and activities do not directly link with the principles of ecologically sustainable development or impact on the environment, other than through our business operations regarding the consumption of resources required to sustain our operations. We use energy saving methods in the OAIC's operation and endeavour to make the best use of resources.

## Information Publication Scheme

As required by the FOI Act, we have an Information Publication Scheme entry on our website that provides information on our structure, functions, appointments, annual reports, consultation arrangements, FOI officer, information we routinely release following FOI requests and information we routinely provide to the Australian Parliament.



# Part 4

## Financial Statements



## INDEPENDENT AUDITOR'S REPORT

### To the Attorney-General

#### Opinion

In my opinion, the financial statements of the Office of the Australian Information Commissioner ('the Entity') for the year ended 30 June 2019:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Entity as at 30 June 2019 and its financial performance and cash flows for the year then ended.

The financial statements of the Entity, which I have audited, comprise the following statements as at 30 June 2019 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement; and
- Notes to the financial statements, comprising a Summary of Significant Accounting Policies and other explanatory information.

#### Basis for opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Entity in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) to the extent that they are not in conflict with the *Auditor-General Act 1997*. I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

#### Accountable Authority's responsibility for the financial statements

As the Accountable Authority of the Entity, the Australian Information Commissioner is responsible under the *Public Governance, Performance and Accountability Act 2013* (the Act) for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under the Act. The Australian Information Commissioner is also responsible for such internal control as the Australian Information Commissioner determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Australian Information Commissioner is responsible for assessing the ability of the Entity to continue as a going concern, taking into account whether the Entity's operations will cease as a result of an administrative restructure or for any other reason. The Australian Information Commissioner is also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.

### Auditor's responsibilities for the audit of the financial statements

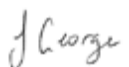
My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Accountable Authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office



Jodi George  
Executive Director  
Delegate of the Auditor-General

Canberra  
11 September 2019

Office of the Australian Information Commissioner

STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2019 comply with subsection 42(2) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Office of the Australian Information Commissioner (OAIC) will be able to pay its debts as and when they fall due.



Angelene Falk  
Australian Information Commissioner  
10 September 2019



Brenton Attard  
Chief Financial Officer  
10 September 2019

## Statement of comprehensive income

for the period ended 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original budget \$'000
<b>NET COST OF SERVICES</b>				
<b>Expenses</b>				
Employee benefits	1.1A	12,003	9,481	10,572
Suppliers	1.1B	4,618	4,271	5,127
Depreciation and amortisation	2.2A	464	530	399
<b>Total expenses</b>		<b>17,085</b>	<b>14,282</b>	<b>16,098</b>
<b>Own-source income</b>				
<b>Own-source revenue</b>				
Rendering of services	1.2A	2,029	2,590	2,170
Other revenue	1.2B	36	36	–
<b>Total own-source revenue</b>		<b>2,065</b>	<b>2,626</b>	<b>2,170</b>
<b>Gains</b>				
Other gains	1.2C	–	1	33
<b>Total gains</b>		<b>–</b>	<b>1</b>	<b>33</b>
<b>Total own-source income</b>		<b>2,065</b>	<b>2,627</b>	<b>2,203</b>
<b>Net cost of services</b>		<b>(15,020)</b>	<b>(11,655)</b>	<b>(13,895)</b>
Revenue from Government	1.2D	13,825	10,711	13,496
<b>Deficit attributable to the Australian Government</b>		<b>(1,195)</b>	<b>(944)</b>	<b>(399)</b>
<b>OTHER COMPREHENSIVE INCOME</b>				
<b>Items not subject to subsequent reclassification to net cost of services</b>				
Changes in asset revaluation surplus		–	19	–
<b>Total other comprehensive income</b>		<b>–</b>	<b>19</b>	<b>–</b>

The above statement should be read in conjunction with the accompanying notes.

**Budget variances commentary**

The major variances on the Statement of Comprehensive Income are employee benefits, depreciation and amortisation, rendering of services revenue, revenue from Government and the operating deficit.

During the reporting period the OAIC incurred higher than anticipated employee benefits costs. The increased costs relate to: recruitment activities to support workload requirements, including by way of short-term contractors and an additional and unforeseeable lump sum superannuation contribution as required by the Department of Finance.

Rendering of services revenue reflects variations to memorandums of understanding with other government entities during the financial year, which resulted in a reduction of revenue.

Depreciation and amortisation variation relates new intangibles such as the new oaic.gov.au website which was established during the reporting period.

As part of the 2019–20 Budget the OAIC received an additional \$329,000 as appropriated funding.

The operating deficit relates to the above variances that were not known at the time of original the budget preparation.



## Statement of financial position

as at 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original budget \$'000
<b>ASSETS</b>				
<b>Financial assets</b>				
Cash	2.1A	601	589	661
Trade and other receivables	2.1B	4,527	5,072	1,656
<b>Total financial assets</b>		<b>5,128</b>	5,661	2,317
<b>Non-financial assets</b>				
Infrastructure, plant and equipment	2.2A	643	977	1,967
Intangibles	2.2A	684	610	554
Other non-financial assets	2.2B	483	79	80
<b>Total non-financial assets</b>		<b>1,810</b>	1,666	2,601
<b>Total assets</b>		<b>6,937</b>	7,327	4,918
<b>LIABILITIES</b>				
<b>Payables</b>				
Suppliers	2.3A	1,131	1,174	899
Other payables	2.3B	1,371	1,698	–
<b>Total payables</b>		<b>2,503</b>	2,872	899
<b>Non-interest bearing liabilities</b>				
Lease incentives	2.4A	488	729	253
<b>Total interest bearing liabilities</b>		<b>488</b>	729	253
<b>Provisions</b>				
Employee provisions	4.1A	2,303	1,745	1,771
<b>Total provisions</b>		<b>2,303</b>	1,745	1,771
<b>Total liabilities</b>		<b>5,293</b>	5,346	2,923
<b>Net assets</b>		<b>1,644</b>	1,981	1,995
<b>EQUITY</b>				
Contributed equity		2,873	2,013	2,873
Reserves		172	172	154
Accumulated results		(1,400)	(205)	(1,032)
<b>Total equity</b>		<b>1,645</b>	1,981	1,995

The above statement should be read in conjunction with the accompanying notes.

**Budget variances commentary**

The major variances on the Statement of Financial Position are financial assets, non-financial assets, payables, non-interest bearing liabilities and equity. As noted on the Statement of Comprehensive Income, a contributing factor to these variations were a number of activities that could not be readily budgeted for.

The cash balance and other receivables reflect a timing difference between funds held in the OAIC's operating bank account and appropriations receivable in the Official Public Account (OPA). The OAIC generally maintains a working bank account balance by transferring funds from the OPA when required. Note 2.1B provides details of the receivables.

Prepayments are the only other non-financial asset held by the OAIC and includes insurance premium, annual subscription costs and lease security deposits. The variation largely relates to security deposits for new short-term leases and a Memorandum of Understanding prepayment to the Australian Human Rights Commission.

The payables variance arose due to the timing difference for supplier payables at year-end.

The variance in liabilities arising from lease commitments results from increased lease space due to the increase in staffing numbers.

The variation in Infrastructure, Plant and Equipment relates to the decision to defer capital works activities.

The employee provision variance represents the increase in staffing numbers not known at the time of budget preparation.

Commentary on equity variance is included on the Statement of Changes in Equity.

## Statement of changes in equity

for the period ended 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original budget \$'000
<b>CONTRIBUTED EQUITY</b>				
<b>Opening balance</b>				
Balance carried forward from previous period		2,013	2,013	2,013
<b>Contributions by owners</b>				
Equity injection — appropriations		860	—	860
<b>Total transactions with owners</b>		<b>860</b>	<b>—</b>	<b>860</b>
<b>Closing balance as at 30 June</b>		<b>2,873</b>	<b>2,013</b>	<b>2,873</b>
<b>RETAINED EARNINGS</b>				
<b>Opening balance</b>				
Balance carried forward from previous period		(205)	739	(620)
Adjustment for changes in accounting policies		—	—	(13)
<b>Adjusted opening balance</b>		<b>(205)</b>	<b>739</b>	<b>(633)</b>
<b>Comprehensive income</b>				
Deficit for the period		(1,195)	(944)	(399)
<b>Total comprehensive income</b>		<b>(1,195)</b>	<b>(944)</b>	<b>(399)</b>
<b>Closing balance as at 30 June</b>		<b>(1,400)</b>	<b>(205)</b>	<b>(1,032)</b>
<b>ASSET REVALUATION RESERVE</b>				
<b>Opening balance</b>				
Balance carried forward from previous period		173	154	154
<b>Comprehensive income</b>				
Other comprehensive income		—	19	—
<b>Total comprehensive income</b>		<b>—</b>	<b>19</b>	<b>—</b>
<b>Closing balance as at 30 June</b>		<b>173</b>	<b>173</b>	<b>154</b>
<b>TOTAL EQUITY</b>				
<b>Opening balance</b>				
Balance carried forward from previous period		1,981	2,906	1,547
<b>Comprehensive income</b>				
Deficit for the period		(1,195)	(944)	(399)
Other comprehensive income		—	19	—
<b>Total comprehensive income</b>		<b>(1,195)</b>	<b>(925)</b>	<b>(399)</b>

Statement of changes in equity (continued)

for the period ended 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original budget \$'000
<b>Transactions with owners</b>				
<b>Contributions by owners</b>				
Equity injection — appropriations		860	–	860
<b>Total transactions with owners</b>		<b>860</b>	<b>–</b>	<b>860</b>
<b>Closing balance as at 30 June</b>		<b>1,645</b>	<b>1,981</b>	<b>1,995</b>

The above statement should be read in conjunction with the accompanying notes.

Accounting policy

Equity injections

Amounts appropriated which are designated as ‘equity injections’ for a year (less any formal reductions) and Departmental Capital Budgets are recognised directly in contributed equity in that year.

Budget variances commentary

The major variance on the Statement of Changes in Equity relates to retained earnings and comprehensive income.

As a non-corporate Commonwealth entity and in accordance with net cash appropriation arrangements the OAIC budgets for a break-even operating result, adjusted for depreciation and amortisation expense. During the reporting period a combination of factors as outlined in the commentary on the Statement of Comprehensive Income resulted in an operating deficit.

## Cash flow statement

for the period ended 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original budget \$'000
<b>OPERATING ACTIVITIES</b>				
<b>Cash received</b>				
Appropriations		13,496	10,711	13,496
Cash transferred from the Public Account		4,325	1,500	–
Sale of goods and rendering of services		1,484	3,395	2,170
GST received		537	411	250
<b>Total cash received</b>		<b>19,842</b>	<b>16,017</b>	<b>15,916</b>
<b>Cash used</b>				
Employees		(11,459)	(9,879)	(10,572)
Suppliers		(5,853)	(4,769)	(5,692)
Section 74 receipts transferred to OPA		(2,473)	(3,328)	–
<b>Total cash used</b>		<b>(19,785)</b>	<b>(17,976)</b>	<b>(16,264)</b>
<b>Net cash from/(used by) operating activities</b>		<b>57</b>	<b>(1,959)</b>	<b>(348)</b>
<b>INVESTING ACTIVITIES</b>				
<b>Cash used</b>				
Purchase of infrastructure, plant and equipment		–	–	(879)
Purchase of intangibles		(205)	(163)	–
<b>Total cash used</b>		<b>(205)</b>	<b>(163)</b>	<b>(879)</b>
<b>Net cash from/(used by) investing activities</b>		<b>(205)</b>	<b>(163)</b>	<b>(879)</b>
<b>FINANCING ACTIVITIES</b>				
<b>Cash received</b>				
Contributed equity		160	–	860
<b>Total cash received</b>		<b>160</b>	<b>–</b>	<b>860</b>
<b>Net cash from/(used by) financing activities</b>		<b>160</b>	<b>–</b>	<b>860</b>
<b>Net increase/(decrease) in cash held</b>		<b>12</b>	<b>(2,122)</b>	<b>(367)</b>
Cash and cash equivalents at the beginning of the reporting period		589	2,711	661
<b>Cash and cash equivalents at the end of the reporting period</b>	2.1A	<b>601</b>	<b>589</b>	<b>294</b>

The above statement should be read in conjunction with the accompanying notes.

**Budget variances commentary**

The major variances on the Cash Flow Statement includes cash received, cash used and purchase of intangibles.

As noted in the commentary on the Statement of Comprehensive Income and Statement of Financial Position, the OAIC ensured delivery of its program outcomes during the reporting period which impacted on cash received and cash used activities as well as the purchase of intangibles.

## Overview

### Objectives of the OAIC

The OAIC is an Australian Government controlled entity established under the *Australian Information Commissioner Act 2010*.

The OAIC budgeted for a breakeven result, adjusted for depreciation and amortisation of \$464,000. During the reporting period there were a number of factors which were not anticipated that resulted in an operating deficit. A significant factor included an additional and unforeseeable lump sum superannuation contribution of \$531,000 that the OAIC became aware of in May 2019.

The OAIC is structured to meet the following outcome:

Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of Information Commissioner, freedom of information and privacy functions.

The OAIC activities contributing toward this outcome are classified as departmental. Departmental activities involve the use of assets, liabilities, income and expenses controlled or incurred by the OAIC in its own right.

### The basis of preparation

The financial statements are general purpose financial statements and are required by s 42 of the *Public Governance, Performance and Accountability Act 2013*.

The financial statements have been prepared in accordance with:

- a) *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015* (FRR) for reporting periods ending on or after 1 July 2015; and
- b) Australian Accounting Standards and Interpretations — Reduced Disclosure Requirements issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars.

### New accounting standards

#### *Adoption of new accounting standard requirements*

No accounting standard has been adopted earlier than the application date as stated in the standard. No new, revised, amending standards and interpretations that were issued prior to the sign-off date and are applicable to the current reporting period have a material effect, or expected to have a future material effect, on the OAIC's financial statements.

### *Future Australian accounting standard requirements*

The following new standards and interpretations were issued by the Australian Accounting Standards Board prior to the signing of the statement by the accountable authority and chief financial officer, which are expected to have a material impact on the OAIC's financial statements for future reporting period(s):

Standard/interpretation	Application date for the OAIC <sup>1</sup>	Nature of impending change/s in accounting policy and likely impact on initial application
AASB 15 Revenue from Contracts with Customers  AASB 2014-5 Amendments to Australian Accounting Standards arising from AASB 15  AASB 2015-8 Amendments to Australian Accounting Standards – Effective Date of AASB 15	1 July 2019	AASB 15 contains a single model that applies to contracts with customers and two approaches to recognising revenue: at a point in time or over time.  The model features a contract-based five-step analysis of transactions to determine whether, how much and when revenue is recognised.  Depending on the nature of the transaction and the OAIC's current policy, the new standard may have a minimal impact on the timing of the recognition of revenue. Final outcome will need to be considered once the related Income for Not-for-Profit project is completed.
AASB 16 Leases	1 July 2019	AASB 16 removes the classification of leases as either operating leases or finance leases – for the lessee – effectively treating all leases as finance leases. AASB 16 requires a lessee to recognise assets and liabilities for all leases with a term of more than 12 months, unless the underlying asset is of low value. A lessee is required to recognise a right-of-use asset representing its right to use the underlying leased asset and a lease liability representing its obligations to make lease payments.  AASB 16 requires enhanced disclosures for both lessees and lessors to improve information disclosed about an entity's exposure to leases. The property lease will create a right of use asset and lease liability for the OAIC. This will impact the value of assets and liabilities, and potentially increase expenses and the value of the depreciation.

- 1 All other new, revised, amending standards and interpretations that were issued prior to the sign-off date and are applicable to future reporting period(s) are not expected to have a future material impact on the OAIC's financial statements.

### **Taxation**

The OAIC is exempt from all forms of taxation except Fringe Benefits Tax and the Goods and Services Tax (GST).

### **Events after the reporting period**

There are no known events after the reporting period that could have a material impact on the financial statements.



## Financial performance

This section analyses the financial performance of the OAIC for the year ended 2019.

### 1.1 Expenses

	2019 \$'000	2018 \$'000
<b>1.1A: Employee benefits</b>		
Wages and salaries	8,856	7,387
Superannuation		
Defined contribution plans	1,060	861
Defined benefit plans	918	381
Leave and other entitlements	1,123	735
Separation and redundancies	–	2
Other employee expenses	45	115
<b>Total employee benefits</b>	<b>12,003</b>	<b>9,481</b>

#### Accounting policy

Accounting policies for employee related expenses is contained in the People and Relationships section.

### 1.1B: Suppliers

#### Goods and services supplied or rendered

Insurance	23	22
Office consumables	47	23
Official travel	288	240
Printing and publications	22	44
Professional services and fees	2,858	2,646
Property outgoing	292	317
Reference materials, subscriptions and licenses	147	82
Staff training	107	239
Telecommunications	31	20
Other	175	89
<b>Total goods and services supplied or rendered</b>	<b>3,990</b>	<b>3,722</b>
Goods supplied	215	149
Services rendered	3,774	3,573
<b>Total goods and services supplied or rendered</b>	<b>3,990</b>	<b>3,722</b>

1.1 Expenses (continued)

	2019	2018
	\$'000	\$'000

Other suppliers

Operating lease rentals in connection with

Related parties

Subleases

603 531

Workers compensation expenses

25 18

Total other suppliers

628 549

Total suppliers

4,618 4,271

Leasing commitments

The OAIC in its capacity as sub-lessee, leases office accommodation that is subject to the provisions of the headlease. The initial periods of accommodation are still current and there are two options in the headlease agreement to renew.

Commitments for minimum lease payments in relation to non-cancellable operating leases are payable as follows:

Within 1 year

2,214 1,266

Between 1 to 5 years

2,143 2,553

Total operating lease commitments

4,357 3,819

Accounting policy

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease.

**1.2 Own-source revenue and gains**

	2019 \$'000	2018 \$'000
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**OWN-SOURCE REVENUE****1.2A: Rendering of services**

Rendering of services	2,029	2,590
<b>Total sale of goods and rendering of services</b>	<b>2,029</b>	<b>2,590</b>

**Accounting policy**

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30-day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

**1.2B: Other revenue**

Resources received free of charge

Remuneration of auditors	36	36
<b>Total other revenue</b>	<b>36</b>	<b>36</b>

**Accounting policy***Resources received free of charge*

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

**GAINS****1.2C: Other gains**

Sale of assets	–	1
<b>Total other gains</b>	<b>–</b>	<b>1</b>

**Accounting policy***Sale of assets*

Gains from disposal of assets are recognised when control of the asset has passed to the buyer.

1.2 Own-source revenue and gains (continued)

	2019	2018
	\$'000	\$'000

1.2D: Revenue from Government

Appropriations		
Departmental appropriation	13,825	10,711
<b>Total revenue from Government</b>	<b>13,825</b>	<b>10,711</b>

Accounting policy

*Revenue from Government*

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the OAIC gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

## Financial position

This section analyses the OAIC's assets used to conduct its operations and the operating liabilities incurred as a result. Employee related information is disclosed in the People and Relationships section.

### 2.1 Financial assets

	2019 \$'000	2018 \$'000
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#### 2.1A: Cash

Cash on hand and at bank	601	589
Total cash and cash equivalents	601	589

#### Accounting policy

Cash is recognised at its nominal amount. Cash and cash equivalents include cash on hand.

#### 2.1B: Trade and other receivables

##### Goods and services receivables

Goods and services	698	652
Total goods and services receivables	698	652

##### Appropriations receivables

Appropriation receivable	3,736	4,325
Total appropriations receivables	3,736	4,325

##### Other receivables

GST Receivable from the Australian Taxation Office	92	95
Total other receivables	92	95
Total trade and other receivables (gross)	4,527	5,072

Total trade and other receivables (net)	4,527	5,072
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##### Trade and other receivables (net) expected to be recovered

No more than 12 months	4,527	5,072
Total trade and other receivables (net)	4,527	5,072

#### Accounting policy

##### Receivables

Receivables are measured at amortised cost using the effective interest method less impairment.

## 2.2 Non-financial assets

### 2.2A: Reconciliation of the opening and closing balances of infrastructure, plant and equipment

#### Reconciliation of the opening and closing balances of infrastructure, plant and equipment for 2019

	Leasehold improvements \$'000	Computer, plant and equipment \$'000	Total \$'000
<b>As at 1 July 2018</b>			
Gross book value	953	24	977
Accumulated depreciation, amortisation and impairment	-	-	-
<b>Total as at 1 July 2018</b>	<b>953</b>	<b>24</b>	<b>977</b>
Depreciation and amortisation	(318)	(15)	(333)
Disposals	-	(1)	(1)
<b>Total as at 30 June 2019</b>	<b>635</b>	<b>8</b>	<b>643</b>
<b>Total as at 30 June 2019 represented by</b>			
Gross book value	953	23	976
Accumulated depreciation, amortisation and impairment	(318)	(15)	(333)
<b>Total as at 30 June 2019</b>	<b>635</b>	<b>8</b>	<b>643</b>

No indicators of impairment were found for infrastructure, plant and equipment.

No infrastructure, plant and equipment are expected to be sold or disposed of within the next 12 months.

#### Revaluations of non-financial assets

As at 30 June 2019 no independent revaluation had been conducted. The OAIC extended the useful life of a small number of assets there was no material impact on asset balances. The last valuation occurred on 30 June 2018.

## 2.2 Non-financial assets (continued)

### Reconciliation of the opening and closing balances of infrastructure, plant and equipment for 2018

	Leasehold improvements \$'000	Computer, plant and equipment \$'000	Total \$'000
<b>As at 1 July 2017</b>			
Gross book value	1,248	39	1,287
Accumulated depreciation, amortisation and impairment	–	–	–
<b>Total as at 1 July 2017</b>	<b>1,248</b>	<b>39</b>	<b>1,287</b>
Additions			
Purchase	–	–	–
Work-in-progress transfer	–	–	–
Revaluations and impairments recognised in other comprehensive income	17	2	19
Depreciation and amortisation	(312)	(17)	(329)
<b>Total as at 30 June 2018</b>	<b>953</b>	<b>24</b>	<b>977</b>
<b>Total as at 30 June 2018 represented by</b>			
Gross book value	953	24	977
Accumulated depreciation, amortisation and impairment	–	–	–
<b>Total as at 30 June 2018</b>	<b>953</b>	<b>24</b>	<b>977</b>

## 2.2 Non-financial assets (continued)

### Reconciliation of the opening and closing balances of intangibles for 2019

	Intangibles	Total
<b>As at 1 July 2018</b>		
Gross book value	2,782	2,782
Accumulated depreciation, amortisation and impairment	(2,172)	(2,172)
<b>Total as at 1 July 2018</b>	<b>610</b>	<b>610</b>
Additions	205	205
Depreciation and amortisation	(131)	(131)
<b>Total as at 30 June 2019</b>	<b>684</b>	<b>684</b>
<b>Total as at 30 June 2019 represented by</b>		
Gross book value	2,987	2,987
Accumulated depreciation, amortisation and impairment	(2,303)	(2,303)
<b>Total as at 30 June 2019 represented by</b>	<b>684</b>	<b>684</b>

No indicators of impairment were found for intangibles.

No intangibles are expected to be sold or disposed of within the next 12 months.



## 2.2 Non-financial assets (continued)

### Reconciliation of the opening and closing balances of intangibles for 2018

	Intangibles	Total
<b>As at 1 July 2017</b>		
Gross book value	2,619	2,619
Accumulated depreciation, amortisation and impairment	(1,971)	(1,971)
<b>Total as at 1 July 2017</b>	648	648
<b>Additions</b>		
Purchase	43	43
Work-in-progress transfer	120	120
Depreciation and amortisation	(201)	(201)
<b>Total as at 30 June 2018</b>	610	610
<b>Total as at 30 June 2018 represented by</b>		
Gross book value	2,782	2,782
Accumulated depreciation, amortisation and impairment	(2,172)	(2,172)
<b>Total as at 30 June 2018 represented by</b>	610	610

#### Accounting policy

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor's accounts immediately prior to the restructuring.

#### *Asset recognition threshold*

Purchases of infrastructure, plant and equipment are recognised initially at cost in the Statement of Financial Position, except for purchases costing less than \$5,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

#### *Revaluations*

Following initial recognition at cost, plant and equipment are carried at fair value. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date was eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

*Depreciation*

Depreciable infrastructure, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the OAIC using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2019	2018
Leasehold improvements	Lease term	Lease term
Computer, plant and equipment	4 to 10 years	4 to 10 years

*Impairment*

All assets were assessed for impairment at 30 June 2019. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the OAIC were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

*Derecognition*

An item of plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

*Intangibles*

The OAIC's intangibles comprise software developed for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the OAIC's software are 2 to 5 years (2018: 2 to 5 years).

All software assets were assessed for indications of impairment as at 30 June 2019.

*Accounting judgements and estimates*

The fair value of infrastructure, plant and equipment has been taken to be the market value of similar assets as determined by an independent valuer.

**2.2 Non-financial assets (continued)**

	2019 \$'000	2018 \$'000
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**2.2B: Other non-financial assets**

Prepayments	483	79
<b>Total other non-financial assets</b>	<b>483</b>	<b>79</b>

**Other non-financial assets expected to be recovered**

No more than 12 months	483	79
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<b>Total other non-financial assets</b>	<b>483</b>	<b>79</b>
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No indicators of impairment were found for other non-financial assets.

**2.3 Payables**

	2019 \$'000	2018 \$'000
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**2.3A: Suppliers**

Trade creditors and accruals	880	848
Rent payable	251	326
<b>Total suppliers</b>	<b>1,131</b>	<b>1,174</b>

**Suppliers expected to be settled**

No more than 12 months	943	901
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More than 12 months	188	273
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<b>Total suppliers</b>	<b>1,131</b>	<b>1,174</b>
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Settlement is generally made in accordance with the terms of the supplier invoice.

**2.3B: Other payables**

Salaries and wages	61	71
Superannuation	12	11
Other employee expenses	–	5
Revenue received in advance	1,298	1,611
<b>Total other payables</b>	<b>1,371</b>	<b>1,698</b>

**Other payables to be settled**

No more than 12 months	1,371	1,698
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<b>Total other payables</b>	<b>1,371</b>	<b>1,698</b>
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2.4 Non-interest bearing liabilities

	2019	2018
	\$'000	\$'000

2.4A: Lease incentives

Lease incentives	488	729
<b>Total lease incentives</b>	<b>488</b>	<b>729</b>
<b>Minimum lease payments expected to be settled</b>		
Within 1 year	242	242
Between 1 to 5 years	246	487
<b>Total lease incentives</b>	<b>488</b>	<b>729</b>

Accounting policy

Refer to Note 1.1.B.

# Funding

This section identifies the OAIC's funding structure.

## 3.1 Appropriations

### 3.1A: Annual appropriations ('recoverable GST exclusive')

#### Annual appropriations for 2019

	Annual appropriation \$'000	Adjustments to appropriation <sup>1</sup> \$'000	Total appropriation \$'000	Appropriation applied in 2019 (current and prior years) \$'000	Variance <sup>2</sup> \$'000
<b>Departmental</b>					
Ordinary annual services	13,496	552	14,048	(16,931)	(2,883)
Other services					
Equity injections	860	-	860	(160)	700
<b>Total departmental</b>	<b>14,356</b>	<b>552</b>	<b>14,908</b>	<b>(17,091)</b>	<b>(2,183)</b>

1 Adjustments including for PGPA Act s 74 receipts.

2 Variance represents the application of current and previous years appropriation and own-source revenue.

3.1 Appropriations

Annual appropriations for 2018

	Annual appropriation <sup>1</sup> \$'000	Adjustments to appropriation <sup>2</sup> \$'000	Total appropriation \$'000	Appropriation applied in 2018 \$'000	Variance <sup>3</sup> \$'000
Departmental					
Ordinary annual services	10,711	566	11,277	(14,377)	(3,100)
Total departmental	10,711	566	11,277	(14,377)	(3,100)

1 In 2017–18, there was an amount of \$29,000 withheld (s 51 of the PGPA Act) appropriation relating to Attorney-General's portfolio efficiencies.

2 Adjustments including for PGPA Act s 74 receipts.

3 Variance represents the application of current and previous years appropriation and own-source revenue.

3.1B: Unspent annual appropriations ('recoverable GST exclusive')

	2019 \$'000	2018 \$'000
Departmental		
Appropriation Act (No. 1) 2018–19	2,473	–
Appropriation Act (No. 2) 2018–19	700	–
Appropriation Act (No. 1) 2017–18	–	3,328
Appropriation Act (No. 1) 2016–17	–	997
Cash held by OAIC	601	589
Total departmental	3,774	4,914

3.2 Net cash appropriation arrangements		
	2019	2018
	\$'000	\$'000
<b>Total comprehensive income/(loss) (less depreciation/amortisation expenses previously funded through revenue appropriations</b>	<b>(731)</b>	<b>(414)</b>
Plus: depreciation/amortisation expenses previously funded through revenue appropriation	<b>(464)</b>	<b>(530)</b>
<b>Total comprehensive income/(loss) — as per the Statement of Comprehensive Income</b>	<b>(1,195)</b>	<b>(944)</b>
<b>Total comprehensive income — as per the Statement of Comprehensive Income</b>	<b>(1,195)</b>	<b>(944)</b>

# People and relationships

This section describes a range of employment and post-employment benefits provided to our people and our relationships with other key people.

4.1 Employee provisions		
	2019 \$'000	2018 \$'000
4.1A: Employee provisions		
Leave	2,303	1,745
<b>Total employee provisions</b>	<b>2,303</b>	<b>1,745</b>
<b>Employee provisions expected to be settled</b>		
No more than 12 months	1,765	1,339
More than 12 months	538	406
<b>Total employee provisions</b>	<b>2,303</b>	<b>1,745</b>

## Accounting policy

Liabilities for short-term employee benefits and termination benefits expected within 12 months of the end of reporting period are measured at their nominal amounts.

### Leave

The liability for employee benefits includes provision for annual leave and long service leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the OAIC's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the work of an actuary performed for the Department of Finance (DoF) and summarised in the Standard Parameters for use in 2018–19 Financial Statements published on the DoF website. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

### Separation and redundancy

Provision is made for separation and redundancy benefit payments. The OAIC recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.



### Accounting policy (continued)

#### *Superannuation*

The OAIC's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), or the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian Government.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in DoF's schedules and notes.

The OAIC makes employer contributions to the employees' defined benefit superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The OAIC accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the financial year.

### Accounting judgements and estimates

The long service leave has been estimated in accordance with the FRR taking into account expected salary growth, attrition and future discounting using the government bond rate.

## 4.2 Key management personnel remuneration

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the OAIC, directly or indirectly, including any director (whether executive or otherwise) of the OAIC. The OAIC has determined the key management personnel to be the Australian Information Commissioner and Deputy Commissioner. Key management personnel remuneration is reported in the table below:

	2019 \$'000	2018 \$'000
Short-term employee benefits	879	1,184
Post-employment benefits	101	169
Other long-term employee benefits	25	23
Termination benefits	–	393
<b>Total key management personnel remuneration expenses<sup>1</sup></b>	<b>1,005</b>	<b>1,769</b>

The total number of key management personnel that are included in the above table is 4 (2018: 4).

- 1 The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the entity.

4.3 Related party disclosures

Related party relationships

The OAIC is an Australian Government controlled entity. Related parties to this entity are key management personnel including the Portfolio Minister and Cabinet and Executive, and other Australian Government entities.

Transactions with related parties

Given the breadth of Government activities, related parties may transact with the government sector in the same capacity as ordinary citizens. Such transactions include the payment or refund of taxes, receipt of a Medicare rebate or higher education loans. These transactions have not been separately disclosed in this note.

The following transactions with related parties occurred during the financial year.

Significant transactions with related parties can include:

- the payments of grants or loans
- purchases of goods and services
- asset purchases, sales transfers or leases
- debts forgiven; and
- guarantees.

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the entity, it has been determined that there are no related party transactions to be separately disclosed.

## Managing uncertainties

This section analyses how the OAIC manages financial risks within its operating environment.

### 5.1 Contingent assets and liabilities

#### Quantifiable contingencies

As at 30 June 2018 the OAIC had no quantifiable contingent liabilities.

#### Unquantifiable contingencies

As at 30 June 2019 the Australian Information Commissioner (AIC) was a respondent to three (3) matters in the Federal Court of Australia and a respondent in one matter in the Federal Circuit Court.

The four (4) matters before the federal courts in which the AIC was a respondent are *Administrative Decisions (Judicial Review) Act 1977* reviews of decisions to finalise privacy complaints and Information Commissioner reviews on FOI requests.

Although the federal courts may award costs, the AIC's exposure to a costs order is highly unlikely in all matters, based on current legal advice. It is not possible to estimate the amounts of payment(s) that may be required in relation to the matters where a costs order may materialise at the conclusion of the matter.

The AIC is also a respondent to four matters in the Administrative Appeals Tribunal, one (1) of which is in relation to a determination made by the AIC under s 52 of the *Privacy Act 1988*, one (1) of which is in relation to a direction given by the AIC under s 26WR of the *Privacy Act 1988*, one (1) of which was relation to a declaration made by the AIC under s 89K of the *Freedom of Information Act 1982*, and one (1) other in relation to an FOI request decision made by the OAIC. However, as the Tribunal is a 'no costs' jurisdiction consideration of contingent liabilities is not necessary in these matters.

#### Accounting policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

5.2 Financial instruments		
	2019	2018
	\$'000	\$'000

5.2A: Categories of financial instruments

Financial assets under AASB 139

Receivables

Cash on hand and at bank		589
Trade and other receivables		651
<b>Total receivables</b>		<b>589</b>
<b>Total financial assets</b>		<b>589</b>

Financial assets under AASB 9

Financial assets at amortised cost

Cash on hand and at bank	601
Trade and other receivables	698
<b>Total financial assets at amortised cost</b>	<b>1,299</b>
<b>Total financial assets</b>	<b>1,299</b>

Financial liabilities

Financial liabilities measured at amortised cost

Trade creditors and accruals	1,131	1,174
<b>Total financial liabilities measured at amortised cost</b>	<b>1,131</b>	<b>1,174</b>
<b>Total financial liabilities</b>	<b>1,131</b>	<b>1,174</b>

## 5.2 Financial instruments (continued)

### Classification of financial assets on the date of initial application of AASB 9

Financial assets class	Note	AASB 139 original classification	AASB 9 new classification	AASB 139 carrying amount at 1 July 2018 \$'000	AASB 9 carrying amount at 1 July 2018 \$'000
Cash and cash equivalents	3.1A	Held-to-maturity	Amortised cost	589	589
Trade and other receivables	3.1B	Held-to-maturity	Amortised cost	651	651
<b>Total financial assets</b>				<b>1,240</b>	<b>1,240</b>

### Reconciliation of carrying amounts of financial assets on the date of initial application of AASB 9

	AASB 139 carrying amount at 30 June 2018 \$'000	Reclassification \$'000	Remeasurement \$'000	AASB 9 carrying amount at 1 July 2018 \$'000
<b>Financial assets at amortised cost</b>				
Held to maturity				
Cash and cash equivalents	589	-	-	589
Loans and receivables				
Trade and other receivables	651	-	-	651
<b>Total amortised cost</b>	<b>1,240</b>	<b>-</b>	<b>-</b>	<b>1,240</b>

1 There is no change in the carrying amounts based on measurements under AASB 139 and transition to AASB 9.

**Accounting policy**

**Financial assets**

With the implementation of AASB 9 Financial Instruments for the first time in 2019, the entity classifies its financial assets in the following categories:

- a) financial assets at fair value through profit or loss
- b) financial assets at fair value through other comprehensive income
- c) financial assets measured at amortised cost.

The classification depends on both the entity’s business model for managing the financial assets and contractual cash flow characteristics at the time of initial recognition. Financial assets are recognised when the entity becomes a party to the contract and, as a consequence, has a legal right to receive or a legal obligation to pay cash and derecognised when the contractual rights to the cash flows from the financial asset expire or are transferred upon trade date.

Comparatives have not been restated on initial application.

*Financial assets at amortised cost*

Financial assets included in this category need to meet two criteria:

- 1. The financial asset is held in order to collect the contractual cash flows; and
- 2. The cash flows are solely payments of principal and interest (SPPI) on the principal outstanding amount.

Amortised cost is determined using the effective interest method.

*Effective interest method*

Income is recognised on an effective interest rate basis for financial assets that are recognised at amortised cost.

*Financial assets at fair value through other comprehensive income (FVOCI)*

Financial assets measured at fair value through other comprehensive income are held with the objective of both collecting contractual cash flows and selling the financial assets and the cash flows meet the SPPI test.

Any gains or losses as a result of fair value measurement or the recognition of an impairment loss allowance is recognised in other comprehensive income.

*Financial assets at fair value through profit or loss (FVTPL)*

Financial assets are classified as financial assets at fair value through profit or loss where the financial assets either doesn’t meet the criteria of financial assets held at amortised cost or at FVOCI (i.e. mandatorily held at FVTPL) or may be designated.

Financial assets at FVTPL are stated at fair value, with any resultant gain or loss recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest earned on the financial asset.

**Accounting policy (continued)***Impairment of financial assets*

Financial assets are assessed for impairment at the end of each reporting period based on expected credit losses, using the general approach which measures the loss allowance based on an amount equal to *lifetime expected credit losses* where risk has significantly increased, or an amount equal to *12-month expected credit losses* if risk has not increased.

The simplified approach for trade, contract and lease receivables is used. This approach always measures the loss allowance as the amount equal to the lifetime expected credit losses.

A write-off constitutes a derecognition event where the write-off directly reduces the gross carrying amount of the financial asset.

*Financial liabilities*

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities. Financial liabilities are recognised and derecognised upon 'trade date'.

*Financial liabilities at fair value through profit or loss*

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

*Financial liabilities at amortised cost*

Financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs. These liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective interest basis.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

**5.3 Fair value measurement**

The following tables provide an analysis of assets and liabilities that are measured at fair value.

The different levels of the fair value hierarchy are defined below.

Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities that the entity can access at measurement date.

Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3: Unobservable inputs for the asset or liability.

**Accounting policy**

The OAC considers the fair value hierarchy levels at the end of the reporting period. There were no transfers in or out of any levels during the reporting period.

5.3: Fair value measurement (continued)

	Fair value measurements at the end of the reporting period			Valuation technique(s) and inputs used
	2019 \$'000	2018 \$'000	Category (Level 1, 2 or 3)	
<b>Non-financial assets<sup>1</sup></b>				
Infrastructure, plant and equipment	<b>643</b>	977	2	Market approach. Market replacement cost less estimate of written down value of asset used.

1. There was non non-financial assets where the highest and best use differed from its current use during the reporting period.

Other information

6.1 Aggregate assets and liabilities

6.1A: Aggregate assets and liabilities

	2019 \$'000	2018 \$'000
<b>Assets expected to be recovered in:</b>		
No more than 12 months	<b>5,010</b>	5,151
<b>Total assets</b>	<b>5,010</b>	5,151
<b>Liabilities expected to be settled in:</b>		
No more than 12 months	<b>3,378</b>	3,279
More than 12 months	<b>784</b>	893
<b>Total liabilities</b>	<b>4,162</b>	4,172







# Part 5

## Appendices

Appendix A: Agency resource statement and resources for outcomes	150
Appendix B: Executive remuneration	153
Appendix C: Memoranda of understanding	157
Appendix D: Privacy statistics	160
Appendix E: FOI statistics	164
Appendix F: Acronyms and abbreviations	200
Appendix G: Correction of material errors	204
Appendix H: List of requirements	205
Appendix I: Index	214

## Appendix A: Agency resource statement and resources for outcomes

**Table A.1:** OAIC resource statement 2018–19\*

		Actual available appropriation for 2018–19 (\$'000)	Payments made 2018–19 (\$'000)	Balance remaining for 2018–19 (\$'000)
		(a)	(b)	(a) – (b)
Ordinary annual services <sup>†</sup>				
Departmental appropriation		19,624	16,550	3,074
<b>Total</b>		<b>19,624</b>	<b>16,550</b>	<b>3,074</b>
Administered expenses				
<b>Total ordinary annual services</b>	<b>A</b>	<b>19,624</b>	<b>16,550</b>	
Other services				
Administered expenses		–	–	
Departmental non-operating		–	–	–
Equity injections <sup>†</sup>		860	160	700
Administered non-operating				
<b>Total other services</b>	<b>B</b>	<b>860</b>	<b>160</b>	<b>700</b>
<b>Total available annual appropriations and payments</b>		<b>20,484</b>	<b>16,710</b>	<b>3,774</b>
Special appropriations				
<b>Total special appropriations</b>	<b>C</b>			
Special accounts		–	–	
<b>Total special accounts</b>	<b>D</b>	<b>–</b>	<b>–</b>	
Total resourcing and payments A + B + C + D		<b>20,484</b>	<b>16,710</b>	

	Actual available appropriation for 2018–19 (\$'000)	Payments made 2018–19 (\$'000)	Balance remaining for 2018–19 (\$'000)
	(a)	(b)	(a) – (b)
Less appropriations drawn from annual or special appropriations above and credited to special accounts	–	–	
And/or payments to corporate entities through annual appropriations	–	–	
<b>Total net resourcing and payments for the OAIC</b>	<b>20,484</b>	<b>16,710</b>	

\* All figures are GST exclusive.

† *Appropriation Act (No.1) 2018–2019*. Includes prior year departmental appropriation and *Public Governance, Performance and Accountability Act 2013* (PGPA Act 2013), s 74 retained revenue receipts.

‡ *Appropriation Act (No.2) 2018–2019*.

**Table A.2: OAIC resource statement 2018–19**

	Budget 2018–19 (\$'000)	Actual expenses 2018–19 (\$'000)	Variation 2018–19 (\$'000)
	(a)	(b)	(a) – (b)
<b>Outcome 1</b>			
Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of Information Commissioner, freedom of information and privacy functions			
<b>Program 1.1</b>			
Complaint handling, compliance and monitoring, and education and promotion			
Administered expenses	–	–	–
Departmental expenses			
Departmental appropriation*	16,162	16,621	(459)
Special appropriations	–	–	–
Special accounts	–	–	–
Expenses not requiring appropriation in the Budget year	432	464	(32)
<b>Total for program 1.1</b>	<b>16,594</b>	<b>17,085</b>	<b>(491)</b>
Outcome 1 totals by appropriation type			
Administered expenses	–	–	–
Departmental expenses			
Departmental appropriation*	16,162	16,621	(459)
Special appropriations	–	–	–
Special accounts	–	–	–
Expenses not requiring appropriation in the Budget year	432	464	(32)
<b>Total expenses for outcome 1</b>	<b>16,594</b>	<b>17,085</b>	<b>(491)</b>
	<b>2018–19</b>	<b>2018–19</b>	
<b>Average staffing level (number)</b>	93	85.3	7.7

\* Departmental appropriation combines ordinary annual services (Appropriation Act No. 1) and PGPA Act 2013, s 74 retained revenue receipts.

## Appendix B: Executive remuneration

This appendix contains information about the remuneration of the Office Australian Information Commissioner's (OAIC) key management personnel and Senior Executive Service.

### Key management personnel

The OAIC has determined that our key management personnel (KMP) are the Australian Information Commissioner and the Deputy Commissioner. Ms Angelene Falk held the position of Australian Information Commissioner for the duration of the reporting period. Ms Falk initially acted in the position until her formal appointment on 16 August 2019.

Mr Andrew Solomon and Ms Melanie Drayton were acting in the Deputy Commissioner's role from the commencement of the reporting period to 6 February 2019. On 14 January 2019 Ms Elizabeth Hampton was appointed to the substantive position.

Details of KMP remuneration are in Note 4.2 of the financial statements. Disaggregated information is shown in Table B.1 and is prepared in accordance with the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) and *Commonwealth Entities Executive Remuneration Reporting Guide for Annual Reports, Resource Management Guide No. 138* (RMG 138).

### Senior Executive Service

The OAIC has three substantive Senior Executive Service (SES) positions including the Deputy Commissioner; the Assistant Commissioner, Dispute Resolution; and the Assistant Commissioner, Regulation and Strategy.

Table B.2 is prepared in accordance with the PGPA Rule and RMG 138 and provides the average annual reportable remuneration for substantive SES.

### Remuneration policies and practices

In accordance with s 17 of the *Australian Information Commissioner Act 2010*, the Australian Information Commissioner's remuneration is set by the Remuneration Tribunal. The Remuneration Tribunal also determine increases to remuneration or allowances.

The OAIC’s SES remuneration is determined by the Australian Information Commissioner under s 24(1) of the *Public Service Act 1999*. When determining SES remuneration, the Australian Information Commissioner has regard to the Australian Public Service Commission’s Australian Public Service Remuneration Report and comparable agencies.

SES determinations set out the salary on commencement and provide for increments in salary, in line with any percentage up to 5% set by the Remuneration Tribunal for the Australian Information Commissioner.

To be eligible for an increase in salary an SES officer must obtain an annual performance rating of effective or above. The OAIC’s performance management framework, Talking About Performance, enables SES officers performance agreements. The agreement objectives are directly linked to the SES officer’s business line responsibilities of the OAIC’s Corporate Plan.

The Australian Information Commissioner sets and reviews the Deputy Commissioner’s performance agreement. The Deputy Commissioner sets and reviews Assistant Commissioners’ performance agreements.

## Remuneration governance arrangements

As a small agency, the Australian Information Commissioner is responsible for setting and monitoring remuneration for the OAIC’s SES officers.



Table B.1: KMP remuneration

		Short-term benefits			Post-employment benefits	Other long-term benefits		
Name	Position title	Base salary (\$)	Bonuses (\$)	Other benefits and allowances (\$)	Superannuation contributions (\$)	Long service leave (\$)	Other long-term benefits (\$)	Total remuneration (\$)
Angeline Falk	Australian Information Commissioner	449,986	–	Nil	34,292	10,599	–	494,877
Elizabeth Hampton	Deputy Commissioner	130,723	–	4,524*	22,436	3,004	–	160,687
Andrew Solomon	Acting Deputy Commissioner	162,093	–	397†	24,877	6,397	–	193,764
Melanie Drayton	Acting Deputy Commissioner	131,124	–	Nil	19,661	5,118	–	155,903
Total		873,927	–	4,921	101,266	25,118	–	1,005,232

\* \$4,524 for travel allowance.

† \$397 for motor vehicle allowance.

Table B.2: Average SES remuneration

Remuneration band	Number of senior executives	Short-term benefits		Post-employment benefits	Other long-term benefits		Termination benefits	Total remuneration
		Average base salary (\$)	Average bonuses (\$)		Average other benefits and allowances (\$)	Average long service leave (\$)		
\$0 – \$220,000	2*	76,300	–	–	13,961	4,763	–	95,024†

\* Represents total number of substantive SES positions and excludes individuals partially assigned to SES responsibilities.

† Excludes KMP remuneration, which is shown in Table B.1.

## Appendix C: Memoranda of understanding

### Australian Digital Health Agency

Under our Memorandum of Understanding (MOU) with the Australian Digital Health Agency we continued to provide support and assistance on privacy matters relating to both the Healthcare Identifiers Service and My Health Record system. These services included:

- responding to enquiries and complaints relating to the privacy aspects of the My Health Record system
- investigating acts and practices that may have been a misuse of healthcare identifiers or a contravention of the My Health Record system, if required
- receiving data breach notifications and providing advice
- conducting privacy assessments
- providing guidance material for individuals and participants in the My Health Record system
- liaising and coordinating on privacy-related matters and activities with key stakeholders
- preparing relevant communication materials
- providing policy and legislation advice relating to the privacy aspects of the Healthcare Identifiers Service and My Health Record System
- monitoring and participating in digital health developments.

During this reporting period, the Office of the Australian Information Commissioner received \$1,626,023.40 (GST exclusive).

For further information on our activities under this MOU, see the *Annual Report of the Australian Information Commissioner's Activities in Relation to Digital Health 2018–19* (available on our website no later than 28 November 2019).

### Australian Human Rights Commission

The Australian Human Rights Commission (AHRC) continued to provide a number of corporate services to our office this year, including financial, administrative, information technology and human resource related tasks. We also sublet premises in Sydney from the AHRC.

For the corporate services we paid \$916,956.72 (GST exclusive) and for the premises (including outgoings) we paid \$1,083,040.92 (GST exclusive) to the AHRC.

## Australian Capital Territory Government

In 2018 we entered into a new MOU with the Australian Capital Territory (ACT) Government to continue to provide privacy services to ACT public sector agencies. These services included:

- responding to privacy complaints and enquiries about ACT public sector agencies in relation to the *Information Privacy Act 2014* (ACT) and its Territory Privacy Principles
- providing policy and legislation advice
- providing advice on data breach notifications, where applicable
- carrying out a privacy assessment
- providing access to our Privacy Professional Network meetings.

For these services, we received \$177,500 (GST exclusive) from the ACT Government.

For further information on our activities under this MOU, see the *Memorandum of Understanding with the Australian Capital Territory for the Provision of Privacy Services 2018–19 Annual Report* (available on our website no later than 22 October 2019).

## Department of Education and Training

In July 2018 we entered into a new MOU to continue to support the Department of Education and Training (now the Department of Education) with their student identifier initiative, providing expert and timely advice on privacy matters. Our services to the department included:

- developing the content for four editions of the TRANSPARENT privacy newsletter for publication on the Unique Student Identifier website
- responding to any enquiries and complaints relating to the privacy aspects of the Student Identifier initiative
- conducting a webinar on privacy matters for registered training organisations
- giving a presentation on privacy matters at a vocational education conference
- conducting a privacy assessment of the Unique Student Identifier Transcript Service.

For these services, we received \$100,000 (GST exclusive).

## Department of Home Affairs

In November 2017, the Attorney-General's Department and the OAIC signed an MOU for the provision of privacy assessments in relation to the National Facial Biometric Matching Capability (NFBMC).

On 20 December 2017, the Department of Home Affairs assumed responsibility for the NFBMC as part of Machinery of Government changes and subsequently assumed responsibility for the roles and responsibilities under the MOU.

In February 2018, the Identity-matching Services Bill 2018 was introduced into Parliament but was not passed, so our privacy assessments have been deferred to later financial years. In May 2019 we signed a variation to the MOU to defer commencing privacy assessments and associated payments for two years.

# Appendix D: Privacy statistics

## Privacy complaints

**Table D.1:** Australian Privacy Principles (APP) issues in privacy complaints in 2018–19

AAP issue*	Number of complaints	% of total
Use or disclosure of personal information (APP 6)	973	29.46
Security of personal information (APP 11)	780	23.61
Access to personal information (APP 12)	480	14.53
Collection of solicited personal information (APP 3)	426	12.90
Quality of personal information (APP 10)	321	9.72
Direct marketing (APP 7)	160	4.84
Notification of the collection of personal information (APP 5)	93	2.82
Correction of personal information (APP 13)	46	1.39
Open and transparent management of personal information (APP 1)	23	0.70
Dealing with unsolicited personal information (APP 4)	9	0.27
Anonymity and pseudonymity (APP 2)	6	0.18
Cross-border disclosure of personal information (APP 8)	6	0.18
Adoption, use or disclosure of government related identifiers (APP 9)	2	0.06

\* A complaint may cover more than one issue.

**Table D.2:** The main remedies agreed in conciliated privacy complaints in 2018–19

Remedy*	Jurisdiction				Total
	Privacy principles†	Credit reporting	Spent convictions and tax file number	My Health Records	
Record amended	267	82	1	13	363
Access provided	196	9	–	–	205
Other or confidential	169	8	–	18	195
Apology	181	3	5	3	192
Compensation	111	6	1	–	118
Changed procedures	100	1	2	1	104
Staff training or counselling	93	–	4	–	97

\* A resolved complaint may involve more than one type of remedy.

† Includes APPs, National Privacy Principles and the Australian Capital Territory’s Territory Privacy Principles.

**Table D.3:** Compensation amounts in closed privacy complaints in 2018–19

Compensation amount	Jurisdiction			Total
	Privacy principles*	Credit reporting	Tax file number	
Up to \$1,000	31	3	–	34
\$1,001 to \$5,000	56	3	1	60
\$5,001 to \$10,000	15	–	–	15
Over \$10,001	9	–	–	9

\* Only includes APP complaints.

## Privacy assessments and digital health assessments

**Table D.4:** Privacy assessments in 2018–19

Privacy assessment subject		Number of entities assessed	Year opened	Date closed
1	Department of Home Affairs (previously the Department of Immigration and Border Protection (DIBP)) — third-party provider for advance passenger processing	1	2016–17	November 2018
2	Loyalty program	2	2016–17	June 2019
3	Department of Home Affairs (previously DIBP) — passenger name record	1	2016–17	Ongoing
4	Data retention scheme — telecommunications service provider 1	1	2017–18	November 2018
5	Data retention scheme — telecommunications service provider 2	1	2017–18	Ongoing
6	Department of Home Affairs (previously DIBP) — connected information environment	1	2017–18	Ongoing
7	ACT Government — ACT Housing	1	2017–18	Ongoing
8	Privacy policy assessment of finance sector organisations	20	2018–19	January 2019
9	Follow up of loyalty programs	2	2018–19	June 2019
10	Data retention scheme — telecommunications service provider 3	1	2018–19	Ongoing
11	Data retention scheme — telecommunications service provider 4	1	2018–19	Ongoing
12	Unique Student Identifier Transcript Service	1	2018–19	Ongoing
13	ACT Government	10	2018–19	Ongoing



**Table D.5: Digital health assessments in 2018–19**

Privacy assessment subject	Number of entities assessed	Year opened	Date closed
Handling of individual healthcare identifiers by a private healthcare operator	1	2017–18	Ongoing
Australian Digital Health Agency — handling of personal information	1	2017–18	Ongoing
Access security governance for the My Health Record system — pharmacies	14	2018–19	Ongoing
Access security governance for the My Health Record system — pathology and diagnostic imaging services	8	2018–19	Ongoing
Access security governance for the My Health Record system — private hospitals	2	2018–19	Ongoing

**Table D.6: Enhanced welfare payment integrity (data matching) assessments**

Privacy assessment subject	Number of entities assessed	Year opened	Date closed
Department of Human Services non-employment income data matching (NEIDM) program	1	2017–18	June 2019
Department of Human Services Pay-As-You-Go (PAYG) data-matching program	1	2017–18	Ongoing
Department of Human Services — information security for the NEIDM and PAYG programs	1	2017–18	Ongoing
Australian Taxation Office — information security as a data source for the Department of Human Services	1	2018–19	Ongoing

## Appendix E: FOI statistics

This appendix contains information regarding:

- requests for access to documents
- applications for amendment of personal records
- charges
- disclosure logs
- review of freedom of information (FOI) decisions
- complaints about agency FOI actions
- the impact of FOI on agency resources
- the impact of Information Publication Scheme (IPS) on agency resources.

It has been prepared using data collected from Australian Government agencies and ministers subject to the *Freedom of Information Act 1982* (FOI Act), and separately from the Administrative Appeals Tribunal (AAT) and the Office of the Australian Information Commissioner's (OAIC) own records. Australian Government agencies and ministers are required to provide, among other details, information about:

- the number of FOI requests made to them
- the number of decisions they made granting, partially granting or refusing access, and the number and outcome of applications for internal review
- the number and outcome of requests to them to amend personal records
- charges collected by them.<sup>1</sup>

The data given by ministers and agencies for the preparation of this appendix is published on [data.gov.au](http://data.gov.au).<sup>2</sup>

1 Australian Government ministers and agencies, and Norfolk Island authorities, are required by s 93 of the FOI Act and r 8 of the *Freedom of Information (Prescribed Authorities, Principal Offices and Annual Report) Regulations 2017* to submit statistical returns to the OAIC every quarter and provide a separate annual report on FOI and IPS costs.

2 The data reported in this appendix has been rounded to two decimal places.

# Requests for access to documents

## Types of FOI requests

The term ‘FOI request’ means a request for access to documents made under s 15 of the FOI Act. Applications for amendment or annotation of personal records under s 48 are dealt with separately below.

A request for personal information means a request for documents that contain information about a person who can be identified (usually the applicant, although not necessarily). A request for ‘other’ information means a request for all other documents, such as documents concerning policy development or government decision-making.

The FOI Act requires that agencies and ministers provide access to documents in response to requests that meet the requirements of s 15 of the FOI Act. The figures in this report do not take account of applications that did not satisfy those requirements.

## Number of FOI requests received

Table E.1 provides a comparison of the number of FOI requests received in each of the past five reporting years, including the percentage increase or decrease from the previous financial year.

**Table E.1:** FOI requests received over the past five years

	2014–15	2015–16	2016–17	2017–18	2018–19
Number of FOI requests received	35,550	37,966	39,519	34,438	38,879
% change from previous financial year	+24.90%	+6.88%	+4.01%	-12.86%	+12.90%

The number of FOI requests made to Australian Government agencies increased by 12.90% in 2018–19. The number of FOI requests received over the past five years has varied considerably from year to year largely driven by significant changes in the number of requests for personal information received each year.

The increase in the overall number of FOI requests in 2018–19, was principally driven by a significant increase in the number of FOI requests for personal information received by the Department of Home Affairs (+24.18%). The Department of Home Affairs receives the most FOI requests of any Australian Government agency, with the bulk of those being personal information requests, so any increase (or decrease) in request numbers to that agency influences overall FOI request numbers across the Australian Government.

In 2018–19, 32,440 FOI requests (or 83.44% of all requests received) were for documents containing personal information. This is a higher proportion than in 2017–18 (81.88%) and 2016–17 (81.94), but a lesser proportion than in 2015–16 (86.55%).

In 2018–19, there were 6,439 FOI requests (or 16.56% of all requests) for ‘other’ information. This is a lower proportion than in 2017–18 (18.12%) and 2016–17 (18.06%), but an increase when compared with 2015–16 (13.45%).

## Number of FOI requests received by an agency or minister

The Governor-General authorised three Administrative Arrangements Orders (AAOs) in 2018–19: on 28 August 2018, 4 April 2019 and 29 May 2019. These AAOs changed the functions and administrative responsibilities of some agencies and resulted in changes to the number and composition of FOI requests received by affected agencies during the year.

In 2018–19, the Department of Home Affairs, the Department of Human Services (DHS)<sup>3</sup> and the Department of Veterans’ Affairs (DVA) together continued to receive the majority of FOI requests received by Australian Government agencies (69.13% of the total). Nearly all of these requests (95.19%) are from individuals seeking access to personal information.

The 20 agencies that received the largest number of requests in 2018–19 are shown in Table E.2, with a comparison to the number of requests each of those agencies received in 2017–18.

Although the Department of Home Affairs received 24.18% more personal FOI requests in 2018–19 than in the previous financial year (from 13,557 to 16,828), it experienced a 44.68% increase in ‘other’ FOI requests (from 620 in 2017–18 to 897 in 2018–19). The increased number of FOI requests, for both personal and other information, may reflect the increased number of functions for which the Department of Home Affairs is responsible for due to the AAOs during the year, and an increased interest in the policies and operations of the Department of Home Affairs.

However, trends in FOI request numbers are not uniform across the Australian Government. For example, other agencies in the top five agencies either received fewer FOI requests this financial year (the DVA experienced a 9.75% decrease) or experienced modest increases (4.87% for the AAT and 2.95% for the Australian Taxation Office (ATO)). The DHS received a similar number of FOI requests to 2017–18 (6,210 compared with 6,238 in 2017–18).

3 Although the AAO of 29 May 2019 changed the name of DHS to Services Australia, DHS has not yet implemented this change and has been referred to as the DHS throughout this report.

Some agencies in the top 20 agencies experienced increases in FOI request numbers far exceeding the overall increase of 12.90%. For example, the Australian Postal Corporation (170.69%), the National Disability Insurance Agency (155.66%) and our own agency, the OAIC (a 171.11% increase).

There was also variance across government in the number and proportion of personal and other information FOI requests in 2018–19.

While the DVA experienced a decline in overall request numbers in 2018–19, there was a 129% increase in other information FOI requests (from 62 in 2017–18 to 142 this year) and for the ATO, it experienced a 28.32% decline in other information FOI requests in 2018–19, in the context of a 2.95% overall increase in request numbers.

Two agencies in last year's top 20 agencies experienced decreases in the numbers of FOI requests received in 2018–19 and no longer appear in the top 20 agencies: the Department of Jobs and Small Business<sup>4</sup> (a 32.42% decrease) and the Commonwealth Ombudsman (a 32.63% reduction).

<sup>4</sup> As a result of the AAO issued on 29 May 2019, the Department of Jobs and Small Business is now called the Department of Employment, Skills, Small and Family Business.

609

Agency	2017-18				2018-19				Change in total		
	Rank	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other		Total	% of all FOI requests
Department of Home Affairs	1	13,557	620	14,177	41.17	1	16,828	897	17,725	45.59	3,548
Department of Human Services	2	6,008	230	6,238	18.11	2	5,955	255	6,210	15.97	-28
Department of Veterans' Affairs	3	3,199	62	3,261	9.47	3	2,801	142	2,943	7.57	-318
Administrative Appeals Tribunal	4	1,445	13	1,458	4.23	4	1,519	10	1,529	3.93	71
Australian Taxation Office	5	862	392	1,254	3.64	5	1,010	281	1,291	3.32	37
National Disability Insurance Agency	11	270	57	327	0.95	6	782	54	836	2.15	509
Australian Federal Police	6	473	209	682	1.98	7	588	138	726	1.87	44
Immigration Assessment Authority	7	536	-	536	1.56	8	512	-	512	1.32	-24
Australian Transaction Reports and Analysis Centre	9	248	168	416	1.21	9	264	245	509	1.31	93

**Table E.2: Agencies by number of FOI requests received (continued)**

Agency	2017-18					2018-19					Change in total
	Rank	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other	Total	% of all FOI requests	
Department of Defence	8	185	308	493	1.43	10	166	275	441	1.13	-52
Department of Health	10	2	374	376	1.09	11	62	372	434	1.12	58
Comcare	14	155	73	228	0.66	12	181	179	360	0.93	132
Attorney-General's Department	18	50	135	185	0.54	13	215	121	336	0.86	151
Australian Securities and Investments Commission	16	77	141	218	0.63	14	122	174	296	0.76	78
Office of the Australian Information Commissioner*	-	35	55	90	0.26	15	150	94	244	0.63	154
Department of Foreign Affairs and Trade	13	97	173	270	0.78	16	90	147	237	0.61	-33
Department of Education <sup>†</sup>	19	55	127	182	0.53	17	95	140	235	0.61	53
Department of the Environment and Energy*	-	-	123	123	0.36	18	-	234	234	0.60	111
Department of the Prime Minister and Cabinet	12	5	271	276	0.80	19	1	169	170	0.44	-106

Table E.2: Agencies by number of FOI requests received (continued)

Agency	2017-18				2018-19				Change in total		
	Rank	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other		Total	% of all FOI requests
Australian Postal Corporation*	-	42	58	100	0.29	20	116	41	157	0.40	57
<b>Total top 20</b>	-	<b>27,301*</b>	<b>3,589†</b>	<b>30,890*</b>	<b>89.69</b>	-	<b>31,457</b>	<b>3,968</b>	<b>35,425</b>	<b>91.12</b>	<b>4,268</b>
Remaining agencies	-	898	2,650	3,548	10.31	-	983	2,471	3,454	8.88	5.24
<b>Total</b>	-	<b>28,199</b>	<b>6,239</b>	<b>34,438</b>	<b>100.0</b>	-	<b>32,440</b>	<b>6,439</b>	<b>38,879</b>	<b>100.0</b>	

\* Denotes an agency not in the top 20 agencies in 2017–18.

† Denotes an agency whose name or functions changed as a result of AAOs issued on 28 August 2018, 4 April 2019 and 29 May 2019. For example, the Department of Education was formerly the Department of Education and Training, and see footnote 3 about DHS's change of name.

‡ Shows the total for the top 20 agencies in 2017–18 (that is, includes figures for three agencies not in the top 20 agency list in 2018–19).



## FOI requests finalised

Agencies and ministers commenced 2018–19 with significantly fewer FOI requests on hand requiring a decision than the previous financial year (47.32% fewer than at the beginning of 2017–18) (Table E.3).

There was a large increase in the number of FOI requests withdrawn by applicants (39.26% more than in 2017–18), a large increase in FOI requests received during this reporting period (12.90%) and a slight reduction in the number of requests decided (4.83% less than in 2017–18). At the end of the financial year, there were 30.31% more requests on hand than at the beginning of the financial year (4,317).

Reasons for the higher number of requests being withdrawn during this reporting period may include:

- increased referral to, or use of, administrative access to provide access to documents outside the FOI Act
- documents already being available on agency disclosure logs or published on agency IPS entries or in annual reports
- applicants accepting verbal assurances that no documents exist within the scope of their request
- requests sent to the wrong agency in the first instance which are then withdrawn and sent to the correct agency.<sup>5</sup>

Despite three AAOs during 2018–19, the number of requests transferred from one agency or minister to another in 2018–19 remained stable, with 639 transferred in 2018–19, compared with 641 in 2017–18.

<sup>5</sup> Although an agency or minister can transfer a wrongly directed FOI request under s 16(1) of the FOI Act, this can only be done with the agreement of the receiving agency. If the applicant makes the request directly to the agency, it must be processed.

**Table E.3: Overview of FOI requests received and finalised**

FOI request processing	2017–18	2018–19	% change
On hand at the beginning of the year	6,279	3,308	-47.32
Received during the year	34,438	38,879	+12.90
Requiring decision*	40,717	42,187	+3.61
Withdrawn	5,089	7,087	+39.26
Transferred	641	639	-0.31
Decided†	31,674	30,144	-4.83
Finalised‡	37,404	37,870	+1.25
On hand at the end of the year	3,313	4,317	+30.31

\* Total of FOI requests on hand at the beginning of this reporting period and requests received during this reporting period.

† Covers access granted in full, part or refused.

‡ The sum of requests withdrawn, transferred and decided.

The percentage of requests granted in full increased in 2018–19, from 49.81% of all requests in 2017–18, to 51.83% in 2018–19 (Table E.4). Despite the increase during this reporting period, the figure is still lower than the 2016–17 figure of 55.47%.

The percentage of FOI requests granted in part was 34.97%; a rate similar to 2017–18 when 34% of all requests were granted in part (Table E.4). The number of FOI requests refused in 2018–19 (which includes requests refused because the documents sought do not exist or cannot be found or a practical refusal reason exists, as well as when exemptions have been applied) decreased from 16.19% in 2017–18 to 13.20% in 2018–19. Note that the number of requests refused in full in 2016–17 was only 9.95%.

Table E.5 lists the top 20 agencies by the number of FOI decisions made.

There are differences in the outcome of FOI requests between those agencies processing the largest number of requests in 2018–19. Eight of the top 20 agencies refused access to documents at levels higher than the average across all Australian Government agencies (37.3%). These agencies process proportionally higher numbers of other information FOI requests. Agencies processing higher proportions of FOI requests for personal information have higher rates of FOI requests granted in full than the Australian Government average (25.93%): for example, the DVA, the Department of Home Affairs, the DHS, the AAT and the Immigration Assessment Authority.

Table E.4: Outcomes of FOI requests decided

Decision	Personal 2017-18	Other 2017-18	Total 2017-18	%	Personal 2018-19	Other 2018-19	Total 2018-19	%
Granted in full*	14,889	889	15,778	49.81	14,577	1,046	15,623	51.83
Granted in part†	9,037	1,730	10,767	34.00	8,835	1,706	10,541	34.97
Refused	2,042	3,087	5,129	16.19	2,147	1,833	3,980	13.20
<b>Total</b>	<b>25,968</b>	<b>5,706</b>	<b>31,674</b>	<b>100</b>	<b>25,559</b>	<b>4,585</b>	<b>30,144</b>	<b>100</b>

\* The release of all documents within the scope of the request, as interpreted by the agency or minister.

† A document is granted in part when a part, or parts, of a document have been redacted to remove any exempt or conditionally exempt matter.

Table E.5: Top 20 agencies by numbers of FOI requests decided in 2018–19

Agency	Granted in full	%	Granted in part	%	Refused	%	Total
Department of Home Affairs	9,395	59.93	5,375	34.28	908	5.79	15,678
Department of Veterans' Affairs	2,607	94.12	70	2.53	93	3.36	2,770
Department of Human Services	845	32.45	1,231	47.27	528	20.28	2,604
Australian Taxation Office	186	17.61	579	54.83	291	27.56	1,056
Administrative Appeals Tribunal	778	75.10	228	22.01	30	2.90	1,036
National Disability Insurance Agency	258	32.78	478	60.73	51	6.48	787
Australian Federal Police	43	6.02	481	67.37	190	26.61	714
Australian Transaction Reports and Analysis Centre	48	9.58	284	56.69	169	33.73	501
Immigration Assessment Authority	381	84.48	66	14.63	4	0.89	451
Department of Defence	54	16.02	187	55.49	96	28.49	337
Attorney-General's Department	116	41.13	46	16.31	120	42.55	282
Comcare	84	32.68	77	29.96	96	37.35	257
Australian Securities and Investments Commission	41	16.94	70	28.93	131	54.13	242

Table E.5: Top 20 agencies by numbers of FOI requests decided in 2018–19 (continued)

Agency	Granted in full	%	Granted in part	%	Refused	%	Total
Department of Health	54	24.11	83	37.05	87	38.84	224
Department of the Environment and Energy	15	9.20	112	68.71	36	22.09	163
Australian Postal Corporation	18	12.41	26	17.93	101	69.66	145
Commonwealth Ombudsman	28	20.44	56	40.88	53	38.69	137
Office of the Australian Information Commissioner	34	25.56	69	51.88	30	22.56	133
Department of the Treasury	29	22.66	35	27.34	64	50.00	128
Department of Prime Minister and Cabinet	22	18.80	38	32.48	57	48.72	117
<b>Top 20</b>	<b>15,036</b>	<b>54.16</b>	<b>9,591</b>	<b>34.55</b>	<b>3,135</b>	<b>11.29</b>	<b>27,762</b>
Remaining agencies	587	24.64	950	39.88	845	35.47	2,382
<b>Total</b>	<b>15,623</b>	<b>51.83</b>	<b>10,541</b>	<b>34.97</b>	<b>3,980</b>	<b>13.20</b>	<b>30,144</b>

Use of exemptions

Table E.6 shows how Australian Government agencies and ministers claimed exemptions under the FOI Act when processing FOI requests in 2018–19. More than one exemption may be applied in processing an FOI request.

Exemptions were not claimed or were not relevant in relation to 6,718 FOI requests decided in 2018–19 (22.29% of all FOI requests decided).

The personal privacy exemption (s 47F) remains the most claimed exemption. It was applied in 38.28% of all FOI requests in which exemptions were claimed in 2018–19. However, this is a decline in the use of s 47F from 42.68% in 2017–18 and 47.90% in 2016–17.

The next most claimed exemptions were s 47E (certain operations of agencies — 21.26%, up from 19.75% in 2017–18), s 37 (documents affecting enforcement of law and protection of public safety — 9.88%, a slight increase from 2017–18 when it accounted for 9.17% of all exemptions applied), s 38 (documents to which secrecy provisions apply — 6.77%, slightly up on 2016–17’s 6.64%) and s 47C (deliberative processes — 6.51%, an increase on 2017–18 when it comprised 5.20% of all exemptions applied).

Overall there was very little change in the application of the remaining exemptions. The only exemption that showed any real difference in 2018–19, was s 47 (documents disclosing trade secrets or commercially valuable information) which comprised 1.34% of all exemptions applied, up from 0.93% in 2017–18.

**Table E.6:** Use of exemptions in FOI decisions in 2018–19

FOI Act reference	Exemption	Personal	Other	Total	% of all exemptions applied
s 33	Documents affecting national security, defence or international relations	578	159	737	4.85
s 34	Cabinet documents	3	126	129	0.85
s 37	Documents affecting enforcement of law and protection of public safety	1,322	179	1,501	9.88
s 38	Documents to which secrecy provisions of enactments apply	853	176	1,029	6.77
s 42	Documents subject to legal professional privilege	228	178	406	2.67
s 45	Documents containing material obtained in confidence	74	179	253	1.67
s 45A	Parliamentary Budget Office documents	1	1	2	0.01
s 46	Documents disclosure of which would be contempt of Parliament or contempt of court	31	7	38	0.25
s 47	Documents disclosing trade secrets or commercially valuable information	44	159	203	1.34
s 47A	Electoral rolls and related documents	5	–	5	0.03
s 47B	Commonwealth-state relations	98	90	188	1.24
s 47C	Deliberative processes	599	390	989	6.51

**Table E.6:** Use of exemptions in FOI decisions in 2018–19 (continued)

FOI Act reference	Exemption	Personal	Other	Total	% of all exemptions applied
s 47D	Financial or property interests of the Commonwealth	85	18	103	0.68
s 47E	Certain operations of agencies	2,550	680	3,230	21.26
s 47F	Personal privacy	4,979	836	5,815	38.28
s 47G	Business	189	368	557	3.67
s 47H	Research	–	3	3	0.02
s 47J	The economy	1	2	3	0.02

## Use of practical refusal

Section 24AB of the FOI Act sets out that a ‘request consultation process’ must be undertaken if a ‘practical refusal reason’ exists (s 24AA). A practical refusal reason exists if the work involved in processing the FOI request would substantially and unreasonably divert the agency’s resources from its other operations, or the FOI request does not adequately identify the documents sought.

The request consultation process involves the agency sending a written notice to the FOI applicant advising them that the agency intends to refuse the request and providing details of how the FOI applicant can consult the agency. The FOI Act imposes an obligation on the agency to take reasonable steps to help the FOI applicant revise their request so that the practical refusal reason no longer exists.

Table E.7 provides information about how Australian Government agencies and ministers engaged in request consultation processes under s 24AB of the FOI Act in 2018–19 and the outcome of those processes.



**Table E.7: Use of practical refusal in 2018–19**

Practical refusal processing step	Personal	Other	Total	%*
Notified in writing of intention to refuse request	1,381	844	2,225	–
Request was subsequently refused or withdrawn	1,137	572	1,709	76.81
Request was subsequently processed	244	272	516	23.19

\* Percentage of the total number of notices advising of an intention to refuse a request for a practical refusal reason.

Agencies sent 47.25% fewer notices of an intention to refuse an FOI request for a practical refusal reason in 2018–19 than in 2017–18. However, 2017–18 was a year in which an unusually large number of notices were issued (a 163.28% increase over the previous financial year) due to the Northern Australia Infrastructure Facility refusing 1,332 FOI requests in 2017–18 for a practical refusal reason. This circumstance largely accounts for the number of notices issued in 2018–19 returning to the pre 2017–18 level.

In 2018–19, 76.81% of the FOI requests subject to a notice of intention to refuse a request were subsequently refused or withdrawn: the proportion was 84.25% in 2017–18 and 66% in 2016–17.

The lower the proportion of FOI requests subsequently refused or withdrawn after a practical refusal notice is issued, the better agencies have been in assisting applicants to revise the scope of their requests so they can be processed. Therefore, taking into account 2017–18 was an atypical year for practical refusal, there has been a significant deterioration in this statistic with less requests subsequently processed in 2018–19 than in 2016–17.

Four agencies issued 66.25% of all notices of an intention to refuse a request for a practical refusal reason in 2018–19: the Department of Home Affairs (792 notices), the DHS (489), the Australian Securities and Investments Commission (ASIC) (104), and the ATO (89).

The Department of Home Affairs issued 34.24% more notices of an intention to refuse a request in 2018–19, than in 2017–18 (when it issued 590) and the DHS issued 91.77% more (489 in 2018–19; 255 in 2017–18). However, the DHS (30.27%), ASIC (41.37%) and the ATO (40.45%) were all more likely to subsequently process an FOI request after issuing a notice of intention to refuse than the Department of Home Affairs (who subsequently processed only 2.27% of requests after a notice was issued).

In June 2019, the Information Commissioner issued a series of decisions under s 55K reviewing practical refusal decisions of agencies. These decisions provide additional guidance for agencies and ministers, in particular their obligation to assist applicants revise the scope of their requests so they can be processed. The OAIC hopes to see a decrease in the proportion of requests refused or withdrawn after a notice of intention to refuse a request is sent in 2019–20.<sup>6</sup>

## Time taken to respond to FOI requests

Agencies and ministers have 30 days within which to make a decision under the FOI Act. The FOI Act allows for the timeframe to be extended in certain circumstances.<sup>7</sup>

If a decision is not made on an FOI request within the statutory timeframe (including any extension period) then s 15AC of the FOI Act provides that a decision refusing access is deemed to have been made. Nonetheless, agencies have an obligation to continue to process a request that has been deemed to be refused.

In 2018–19, 82.58% of all FOI requests determined were processed within the applicable statutory time period: 83.14% of all personal information requests and 79.83% of non-personal requests. This represents a slight decrease in timeliness of decision-making from 2017–18 (when 84.86% were decided within time).

The Department of Home Affairs compliance with statutory timeframes remained relatively stable at 74.16% in 2018–19 (it was 74.88% in 2017–18); however, this is a significant improvement over 2016–17, when only 25.22% of FOI requests to the Department of Home Affairs were finalised within the statutory time period.

A number of agencies that process substantial numbers of FOI requests decided them all within the statutory time period in 2018–19. These agencies include the Department of Health (224 requests decided in 2018–19), the Department of the Environment and Energy (163), the OAIC (133), the Department of Employment, Skills, Small and Family Business (DESSFB) (111), the Department of Education (94), the Australian Skills Quality Authority (94), IP Australia (87), the Department of Agriculture (72) and the Department of Finance (64).

<sup>6</sup> These decisions will be reflected in the FOI Guidelines.

<sup>7</sup> An agency may extend the period of time to make a decision by agreement with the applicant (s 15AA) or to undertake consultation with a third party (ss 15(6)–(8)). An agency can also apply to the Information Commissioner for more time to process a request when the request is complex or voluminous (s 15AB), or when access has been deemed to have been refused (ss 15AC and 51DA) or deemed to have been affirmed on internal review (s 54D). These extension provisions acknowledge there are circumstances when it is appropriate for an agency to take more than 30 days to process a request. When an agency has obtained an extension of time to deal with an FOI request and finalises the request within the extended time, the request is recorded as having been determined within the statutory time period.

There was also an overall reduction in the number of requests decided more than 90 days over the applicable statutory time period (Table E.9) when compared with 2017–18 (2.46% in 2018–19; 6.63% in 2017–18).

**Table E.9: Response times greater than 90 days after the expiry of the applicable statutory period in 2018–19**

Agency	Total requests decided	Requests decided more than 90 days after statutory period	% FOI requests received by agency or minister
Australian Competition Tribunal	1	1	100
Minister for Indigenous Affairs	2	2	100
Australian Broadcasting Corporation	55	13	23.64
National Archives of Australia	8	1	12.5
Department of Prime Minister and Cabinet	117	12	10.26
Department of Industry, Innovation and Science	65	6	9.23
Veterans' Review Board	12	1	8.33
Office of the Commonwealth Director of Public Prosecutions	37	3	8.11
Australian Federal Police	714	55	7.70
Australian Sports Anti-Doping Authority	23	1	4.35
Department of Home Affairs	15,678	634	4.04
Department of the Treasury	128	3	2.34
Australian Digital Health Agency	49	1	2.04
Australian Criminal Intelligence Commission	53	1	1.89
National Disability Insurance Agency	787	2	0.25
Immigration Assessment Authority	451	1	0.22
Department of Human Services	2,461	1	0.04
Department of Veterans' Affairs	2,770	1	0.04

# Applications for amendment of personal records

Section 48 of the FOI Act confers a right on a person to apply to an agency or to a minister to amend a document to which lawful access has been granted, when the document contains personal information about the applicant:

- that is incomplete, incorrect, out of date or misleading and
- that has been used, is being used, or is available for use by the agency or minister for an administrative purpose.

In 2018–19, 10 agencies received 673 amendment applications (no applications were received by ministers). This is a 31.96% increase in applications from 2017–18 when 510 applications were received. However, in 2017–18 there was a 53.64% decrease in applications compared with the previous year (1,100 amendment applications were made in 2016–17).

The increase in amendment applications is largely due to an increase in applications received by the Department of Home Affairs (35.60% more in 2018–19 than in 2017–18). Increases in amendment applications were also experienced by the Department of Defence (a 50% increase, from 10 to 15 applications) and the DHS (a 21.43% increase, from 14 to 17 applications).<sup>8</sup>

Table E.10 compares the decision-making for amendment applications with 2017–18. In 2018–19, a decision was made to amend or annotate a person’s personal record in 75.86% of all decided applications, an increase in the proportion granted in 2017–18, when 72.28% of all applications were granted. Because the Department of Home Affairs accounts for 91.38% of all amendment applications received, overall trends in amendment decision-making are largely determined by decisions made by the Department of Home Affairs.

8 The other agencies to receive amendment application in 2018–19 were the Australian Federal Police, the Australian National University, the Australian Nuclear Science and Technology Organisation, Comcare, the Commonwealth Ombudsman, the DESSFB and the DVA.

**Table E.10: Decisions on amendment applications**

Decision	2017–18	% of total	% change*	2018–19	% of total
Requests granted: amend record	314	57.83	24.14	407	63.40
Requests granted: annotate record	70	12.89	14.29	80	12.46
Requests granted: amend and annotate record	2	0.37	-100	–	–
Requests refused	157	28.91	-1.27	155	24.14
<b>Total decided</b>	<b>543</b>	<b>100</b>	<b>–</b>	<b>642</b>	<b>100</b>

\* Percentage increase or decrease over 2017–18.

## Time taken to respond to amendment applications

An agency is required to notify an applicant of a decision on their application to amend personal records as soon as practicable, but, in any case, not later than 30 days after the day the request is received, or a longer period as extended under the FOI Act.

In 2018–19, 89.51% of all amendment applications were decided within the applicable statutory time period compared to 85.82% in 2017–18.

## Charges

Section 29 of the FOI Act provides that an agency or minister may impose charges in respect of FOI requests, except requests for personal information, and sets out the process by which charges are assessed, notified and adjusted.

Table E.11 shows the amounts collected by the 20 agencies that collected the most in charges under the FOI Act in 2018–19. These top 20 agencies are responsible for 86.55% of all charges collected by Australian Government agencies and ministers.

In 2018–19, agencies notified a total of \$357,039 in charges with respect to 822 FOI requests, but collected only \$122,774 (34.39% of the total notified). This difference is due to agencies exercising their discretion under s 29 of the FOI Act not to impose the whole charge, or applicants withdrawing their FOI request and not paying the notified charge.

Agencies notified less in charges in 2018–19 than in 2017–18, but collected more. As noted above, in 2018–19, agencies notified a total of \$357,039 in charges, 6.91% less than in 2017–18, when \$383,531 was notified, and collected \$122,774, a 5.97% increase over 2017–18 when \$115,863 was collected.

**Table E.11: Top 20 agencies by charges collected in 2018–19**

Agency	Requests received	Requests where charges notified	Total charges notified (\$)	Total charges collected (\$)
Department of Health	434	161	49,640	18,341
Department of Defence	441	11	12,975	12,449
Department of the Environment and Energy	234	30	12,800	10,822
Department of Agriculture	117	38	12,731	10,328
Department of Education	235	67	17,052	8,093
Civil Aviation Safety Authority	146	36	11,330	6,638
Department of Industry, Innovation and Science	96	23	10,981	5,178
Department of Finance	135	26	11,708	3,531
Clean Energy Regulator	21	11	23,422	3,426
Airservices Australia	65	18	10,208	3,128
Australian Maritime Safety Authority	74	18	5,027	3,119
Australian Competition and Consumer Commission	72	16	9,779	2,769
IP Australia	119	13	5,093	2,666
Department of Infrastructure, Transport, Cities and Regional Development	99	9	4,710	2,400
Australian Securities and Investments Commission	296	10	3,108	2,393
Australian Communications and Media Authority	24	5	17,618	2,285

**Table E.11:** Top 20 agencies by charges collected in 2018–19 (continued)

Agency	Requests received	Requests where charges notified	Total charges notified (\$)	Total charges collected (\$)
Department of Foreign Affairs and Trade	237	24	14,074	2,251
Department of Communications and the Arts	64	4	5,738	2,248
Department of the Treasury	153	17	5,784	2,196
National Competition Council	3	3	3,125	2,003
Top 20	3,065	540	246,903	106,264
Remaining agencies	3,5814	282	110,136	16,510
<b>Total</b>	<b>38,879</b>	<b>822</b>	<b>357,039</b>	<b>122,774</b>

# Disclosure log

All Australian Government agencies and ministers subject to the FOI Act are required to maintain an FOI disclosure log on a website. The disclosure log lists information that has been released to FOI applicants, subject to some exceptions (such as personal or business information). Information about agency and ministerial compliance with disclosure log requirements has been collected since 2012–13.

A total of 104 agencies and ministers provided information about their disclosure log activity in 2018–19. Collectively, they reported 1,200 new entries on disclosure logs during 2018–19; including documents available for download directly from the agency or minister’s website in relation to 713 requests, documents available from another website in relation to 52 requests, and 435 entries in which the documents are available by another means (usually upon request).

The total number of new entries published on disclosure logs in 2018–19 is 8.70% higher than 2017–18, when 1,104 entries were added.

However, despite their being an increase in the proportion of documents which members of the public can access directly from agency websites (in 2018–19 it was 59.42% compared to 56.52% in 2017–18) the 2018–19 proportion is lower than the 66.87% in 2015–16. As explained in the FOI Guidelines, publication of documents directly through the disclosure log, rather than providing a description of the documents

and how they can be obtained on request from the agency or minister, is consistent with the FOI Act object of facilitating public access to government information.<sup>9</sup> In 2019–20, the OAIC intends to revise Part 14 of the FOI Guidelines (Disclosure Log) to emphasise the benefit to the community, and to agencies, of making documents released in response to FOI requests readily available on agency websites and to provide guidance to assist agencies in achieving this objective.

In 2018–19, agencies and ministers reported a total of 268,861 unique visits to disclosure logs and 215,209 page views, which represents a 607.64% increase in unique visits since 2017–18 and a 289.47% increase in total page views reported in 2017–18. It is not clear whether this increase was the result of actual increases or better recording and reporting of website visits occurred in 2018–19 than in previous years.

## Review of FOI decisions

Under the FOI Act, an applicant who is dissatisfied with the decision of an agency or minister on their initial FOI request has a number of avenues of review. The applicant can seek internal review with the agency or minister or external merits review by the Information Commissioner (IC review). Information Commissioner decisions under s 55K are reviewable by the AAT. AAT decisions may be appealed on a question of law to the Federal Court. In addition, an applicant can complain at any time to the Information Commissioner about an agency's actions under the FOI Act.

Third parties who have been consulted in the FOI process also have review rights if an agency or minister decides to release documents contrary to their submissions. Consultation requirements apply for state governments (s 26A), commercial organisations (s 27) and private individuals (s 27A).

### Internal review

Although there is no obligation to do so, the Information Commissioner recommends and encourages FOI applicants to apply for an internal review before applying for an IC review.

In 2018–19, 893 applications were made for an internal review of FOI decisions: 12.05% more than in 2017–18 (when 797 internal review applications were made).

Of the 893 applications for an internal review, 543 (60.81%) were for review of decisions made in response to requests for personal information and 350 (39.19%) were for review of decisions on other information requests.

<sup>9</sup> FOI Guidelines [14.32].



Agencies finalised 829 decisions on internal review in 2018–19: 26.60% more than in 2017–18 (733). Of these, 429 (51.75%) affirmed the original decision, 91 (10.98%) set aside the original decision and granted access in full, 232 (27.99%) granted access in part, seven (0.84%) granted access in another form, 14 (1.69%) resulted in lesser access and applicants withdrew 39 applications (4.71%) without concession by the agency. Agencies reduced the charges levied as a result of internal review in 17 cases (2.05%).

There were eight applications for internal review of decisions on amendment applications, 20% fewer than in 2017–18 (when 10 applications were made). Agencies made 10 internal review decisions on amendment applications: in eight (80%) the original decision was affirmed and in two (20%) the original decision was set aside. In 2017–18, 77.78% of original decisions were affirmed and 22.22% set aside.

IC review

Table E.12 provides a breakdown by agency and minister of IC review applications received in 2018–19, where the agency or minister was the subject of more than one IC review. In total, there were 928 applications for IC review (up 15.86% from 801 in 2017–18).

In general, the agencies that received the most FOI requests have the most IC review applications lodged against their decisions. In 2018–19, of the 20 agencies experiencing the most IC reviews, 15 also appear in the list of top 20 agencies in terms of the number of FOI requests received.

However, some agencies that did not receive large numbers of FOI requests were the subject of a comparatively large number of IC review applications given their FOI caseload. In 2018–19, the agencies with a large number of IC reviews lodged, expressed as a proportion of the total number of FOI requests received included the Australian Broadcasting Corporation (15.71%), ASIC (11.49%) and the DESSFB (11.49%).

**Table E.12** IC review — top 20 by review applications received

Agency/minister	FOI requests received	Access refusal decisions	Access grant decisions	Total IC reviews	% of FOI requests
Department of Home Affairs	17,725	198	–	198	1.11
Department of Human Services	6,210	107	–	107	1.72
Department of Veterans' Affairs	2,943	47	–	47	1.60
Australian Federal Police	726	44	2	46	6.34
Department of Defence	441	41	3	44	9.98
Australian Taxation Office	1,291	41	–	41	3.18
Australian Securities and Investments Commission	296	34	–	34	11.49
Attorney-General's Department	336	28	–	28	8.33
Comcare	360	24	–	24	6.67
Department of Employment, Skills, Small and Family Business	148	17	–	17	11.49
National Disability Insurance Agency	836	17	–	17	2.03
Department of Foreign Affairs and Trade	237	16	–	16	6.75
Department of Prime Minister and Cabinet	170	15	–	15	8.82
Department of Health	434	13	2	15	3.46
Minister for Resources and Northern Australia	6	13	–	13	216.67
Australian Broadcasting Corporation	70	11	–	11	15.71
Australian Skills Quality Authority	101	10	–	10	9.90

**Table E.12** IC review — top 20 by review applications received (continued)

Agency/minister	FOI requests received	Access refusal decisions	Access grant decisions	Total IC reviews	% of FOI requests
Australian Transaction Reports and Analysis Centre	509	9	–	9	1.77
Department of the Environment and Energy	234	9	2	11	4.70
NBN Co Limited	119	7	–	7	5.88
Subtotal	33,192	701	9	710	2.14
Remaining agencies/ ministers	5,687	203	15	218	3.83
<b>Total</b>	<b>38,879</b>	<b>904</b>	<b>24</b>	<b>928</b>	<b>2.39</b>

There was an 8.03% increase in the number of IC reviews finalised by the OAIC in 2018–19 (659), compared with 2017–18 (when 610 were finalised).

In 2018–19, 599 IC reviews were finalised without a formal decision being made under s 55K of the FOI Act (90.90% of all IC reviews finalised during this reporting period). This is a higher percentage than in 2017–18 (79.84%) and 2016–17 (79.81%).

The number of IC review applications declined under s 54W<sup>10</sup> of the FOI Act increased as a percentage of the total IC reviews finalised in 2018–19. In 2018–19, 196 IC reviews were declined under s 54W (29.74%) (2017–18, 26.89%; 2016–17, 27.38%).

Of the 196 IC review applications decisions taken not to review or not to continue to review the application under s 54W of the FOI Act: 64.29% were declined under s 54W(a)(i) (either frivolous, vexatious, misconceived, lacking in substance, or not made in good faith), 17.35% were declined under s 54W(a)(ii) (failure to cooperate), 2.55% under s 54W(a)(iii) (lost contact) and 15.82% under s 54W(b) (allow to go direct to AAT).

In 2018–19, the Information Commissioner made 60 decisions under s 55K of the FOI Act. Of the 60 decisions, 19 affirmed the decision under review (31.67%), 37 set aside the reviewable decision (61.67%) and four decisions were varied (6.67%). In 2017–18, the Information Commissioner affirmed 55.28% of decisions, set aside 36.59% and varied 8.13%.

<sup>10</sup> Section 54W of the FOI Act contains a number of grounds under which the Information Commissioner may decide not to undertake an IC review or not to continue to undertake an IC review.

Of the 19 decisions affirmed by the Information Commissioner, two decisions (10.5%) were revised by the agency or minister under s 55G of the FOI Act during the IC review, giving greater access to the documents sought. Of the 37 decisions set aside and substituted by the Information Commissioner, in 10 (27%), the agency withdrew certain exemption contentions during the course of the IC review.

The percentage of applications received by the OAIC which were out of jurisdiction or invalid decreased from 13.28% in 2017–18, to 11.10% in 2018–19 (Table E.13).

**Table E.13: IC review outcomes**

Information Commissioner decisions	2017–18	% of 2017–18 total	2018–19	% of 2018–19 total
Section 54N — out of jurisdiction or invalid	81	13.28	103	15.63
Section 54R — withdrawn	131	21.48	199	30.20
Section 54R — withdrawn/conciliated	64	10.49	76	11.53
Section 54W(a) — deemed acceptance of preliminary view/appraisal	—	—	—	—
Section 54W(a)(i) — frivolous, vexatious, misconceived, lacking in substance, or not in good faith	79	12.95	126	19.12
Section 54W(a)(ii) — failure to cooperate	59	9.67	34	5.46
Section 54W(a)(iii) — lost contact	10	1.64	5	0.76
Section 54W(b) — refer to AAT	16	2.62	31	4.70
Section 54W(c) — failure to comply	—	—	—	—
Section 55F — set aside by agreement	15	2.46	13	1.97
Section 55F — varied by agreement	27	4.43	12	1.82
Section 55F — affirmed by agreement	—	—	—	—
Section 55G — substituted	5	0.82	—	—
Section 55K — affirmed by IC	68	11.15	19	2.88
Section 55K — set aside by IC	45	7.38	37	5.62
Section 55K — varied by IC	10	1.64	4	0.61
<b>Total</b>	<b>610</b>	<b>100.1*</b>	<b>659</b>	<b>100.3</b>

\* This total reflects rounding to two decimal places.

### AAT review

An application can be made to the AAT for review of the following FOI decisions:

- a decision of the Information Commissioner under s 55K
- an IC reviewable decision (that is, an original decision or an internal review decision), but only if the Information Commissioner decides, under s 54W(b), that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT directly.

In 2018–19, 21 applications for review of FOI decisions were made to the AAT. This is a 30% decrease on the 30 applications made in 2017–18.

Table E.14 provides a breakdown, by agency, of applications to the AAT in FOI matters in 2018–19. This data has been provided by the AAT.

In 2018–19, two agencies sought review in the AAT of decisions made by the Information Commissioner under s 55K of the FOI Act: the Australian Bureau of Statistics and the Department of Prime Minister and Cabinet.

**Table E.14: AAT review by agency (respondent)**

Respondent	Applications
Office of the Australian Information Commissioner	4
Department of Home Affairs	3
Australian Taxation Office	3
Department of Foreign Affairs and Trade	2
Department of Prime Minister and Cabinet	1
Department of Social Services	1
Department of Health	1
Department of Human Services	1
Department of Defence	1
Aged Care Quality and Safety Commissioner	1
Australian Federal Police	1
Australian Prudential Regulation Authority	1
Other (appeals by agencies against IC review decisions)	1
<b>Total</b>	<b>21</b>

Twenty-one applications remain outstanding with the AAT at the end of 2018–19.

Table E.15 shows the outcome of the 20 FOI reviews finalised by the AAT in 2018–19. AAT provided this data.

**Table E.15: Outcomes of FOI reviews finalised by the AAT**

AAT outcomes	Number in 2017–18	% of total 2017–18	Number in 2018–19	% of total 2018–19
Affirmed by consent	1	3.03	1	5.00
Varied/set aside/remitted by consent	5	15.15	4	20.00
Dismissed by consent	2	6.06	–	–
Withdrawn by applicant	10	30.30	4	20.00
Decision affirmed	5	15.15	6	30.00
Decision varied/set aside	7	21.21	1	5.00
Dismissed by AAT — frivolous or vexatious/fail to comply with direction	2	6.06	–	–
Dismissed — no application fee paid	1	3.03	1	5.00
Dismissed — non-reviewable decision	–	–	3	15.00
<b>Total</b>	<b>33</b>	<b>99.99*</b>	<b>20</b>	<b>100.00</b>

\* This total reflects rounding to two decimal places.

Of the 20 FOI reviews finalised by the AAT, seven (35.00%) resulted in published decisions in 2018–19.

The AAT affirmed the agency's decision in six (30.00%) of the 20 AAT reviews, compared with five (15.15%) in 2017–18.

Of the 20 FOI reviews finalised in 2018–19, three involved applications made by Australian Government agencies following decisions made by the Information Commissioner under s 55K of the FOI Act. Of these three reviews, one application was affirmed (by decision), one was varied with consent, and the other set aside and substituted by consent.

## Federal Court

In January 2019, the Federal Circuit Court of Australia (Jarrett J) set aside a decision by a delegate of the Information Commissioner not to continue to undertake an IC review between the applicants and the second respondent, the Australian Human Rights Commission, and remitted the application to the OAIC for further consideration and determination according to law (see *Powell & Anor v Australian Information Commissioner & Anor* [2019] FCCA 39 (9 January 2019)).

## Impact of FOI on agency resources

To assess the impact on agency resources of their compliance with the FOI Act, agencies are asked to estimate the hours staff spent on FOI matters and the non-labour costs directly attributable to FOI, such as legal and specific FOI training costs. Agencies submit these estimates annually. Agency estimates may also include FOI processing work undertaken on behalf of a minister's office.

Agencies are also asked to report their costs of compliance with the IPS. To facilitate comparison with information in previous annual reports, IPS costs are not included in this analysis of the cost of agency compliance with the FOI Act, but are discussed separately below.

The total reported cost attributable to processing FOI requests in 2018–19 was \$59.85 million, a 14.68% increase over the previous financial year's total of \$52.19 million.

The reason for the increase in the overall cost of FOI activity is a 12.96% increase in the total staff hours devoted to FOI in 2018–19 (when compared with 2017–18). Total staff hours in 2017–18, were 744,350; however, that rose to 840,803 in 2018–19. As a result, the average cost of each FOI request determined during this reporting period rose to \$1,985.30 (from \$1,648 in 2017–18).

Table E.16 sets out the average cost per FOI request determined (granted in full, in part or refused) compared to the last two financial years. The average cost per request determined in 2018–19 was \$1,985 (up 20.45% from 2017–18).

**Table E.16:** Average cost per request determined

Year	Requests determined	Total cost (\$)	Average cost per request determined (\$)
2016–17	34,029	44,787,154	1,316
2017–18	31,674	52,186,179	1,648
2018–19	30,144	59,844,953	1,985

Staff costs

All agencies are asked to supply information about staff resources allocated to FOI.

**Table E.17:** Total FOI staffing across all Australian Government agencies

Staffing	2017–18	2018–19	% change
Total staff hours	744,350	840,803	12.96
Total staff years	372.18	420.40	12.96

Agencies provide estimates of the number of staff hours spent on FOI to enable calculation of salary costs (and 60% related costs) directly attributable to FOI request processing (Table E.17).

A summary of staff costs is provided in Table E.18, based on information provided by agencies and ministers and is calculated using the following median base annual salaries from Australian Public Service Commission public information:<sup>11</sup>

- FOI contact officer (officers whose duties included FOI work) \$78,092<sup>12</sup>
- other officers involved in processing requests:
  - Senior Executive Service (SES) officers (or equivalent) \$196,609<sup>13</sup>
  - APS Level 6 and Executive Levels (EL) 1–2 \$113,866<sup>14</sup>
  - Australian Public Service (APS) Levels 1–5 \$63,952<sup>15</sup>

11 Because salary levels differ between agencies, median salary levels have been used. These were published by the Australian Public Service Commission in its *APS Remuneration Report 2018*. These median levels are as at 31 December 2018.

12 APS Level 5 base salary median.

13 SES Band 1 base salary median.

14 Executive Level 1 base salary median.

15 APS Level 3 base salary median.



- minister's office:
  - minister and advisers \$140,680<sup>16</sup>
  - minister's support staff \$63,952.<sup>17</sup>

**Table E.18:** Estimated staff costs of FOI compared to last year

Type of staff	Staff years 2017–18	Total staff costs 2017–18 (\$)	Staff years 2018–19	Total staff costs 2018–19 (\$)	Total staff costs (% change)
FOI contact officers	277.32	33,971,341	311.71	38,946,729	14.65
SES	13.53	4,097,902	13.75	4,324,454	5.53
APS Level 6 and EL 1–2	42.38	7,569,521	50.31	9,166,395	21.10
APS Levels 1–5	36.97	3,665,451	43.07	4,406,957	20.23
Minister and advisers	1.05	231,062	0.94	211,357	-8.53
Minister's support staff	0.93	92,608	0.63	64,207	-30.67
<b>Total</b>	<b>372.18</b>	<b>49,627,885</b>	<b>420.40</b>	<b>57,120,102</b>	<b>15.10</b>

Total estimated staff costs in 2018–19 were \$57.12 million, 15.10% more than in 2017–18. In 2017–18, total estimated staff costs rose by 17.18% over the previous financial year.

## Non-labour costs

Non-labour costs directly attributable to FOI are summarised in Table E.19, including the percentage change from the previous year. The total non-labour costs in 2018–19 were \$2.73 million, a 6.35% increase over the previous financial year (\$2.56 million).

The largest increases in non-labour costs in 2018–19 were in relation to general legal advice costs (22.88% higher than in 2017–18) and training costs (19.07% higher). The higher general legal advice costs are primarily the result of Indigenous Business Australia and the DVA reporting higher than average legal expenses. Indigenous Business Australian explains that their increased general legal expenditure in 2018–19 relates to an application to the Information Commissioner to have a person declared vexatious. The DVA general legal advice expenditure increased by 644.71% in 2018–19 (from \$18,419 in 2017–18 to \$137,168 in 2018–19).

<sup>16</sup> Executive Level 2 base salary median.

<sup>17</sup> APS Level 3 base salary median.

There was also a 19.07% increase in training costs associated with FOI in 2018–19. This reflects training provided to new FOI staff and ongoing training for existing staff.

However, as can be seen from Table E.19, there was a substantial (-47.50%) decrease in general administrative costs (these include printing and postage). Undoubtedly, this reflects a general decline in the number of people requiring documents to be printed and sent to them in the post and increasing efficiencies in the use of digital technology.

**Table E.19: Identified non-labour costs of FOI**

Costs	2017–18	2018–19	% change
General legal advice costs	1,234,631	1,517,125	22.88
Litigation costs	426,145	414,635	-2.70
Total legal costs	1,660,776	1,931,760	16.32
General administrative costs	274,532	144,140	-47.50
Training	323,958	385,745	19.07
Other	299,029	263,206	-11.98
<b>Total</b>	<b>2,558,295</b>	<b>2,724,851</b>	<b>6.51</b>

### Average cost per FOI request

The overall average number of staff days to process an FOI request in 2018–19 was 2.88 days; the same as in 2017–18 (2.87 days). As in previous years, the average staff days per FOI request differed significantly across agencies, from 0.02 days (the Australian Sports Anti-Doping Authority) to 37.60 days (the Bureau of Meteorology).

The average cost per request received also differed significantly across agencies from \$10.77 to \$71,441.05. The overall average cost per request received was \$1,539.26, a 1.58% increase on the previous year's average of \$1,515.37.

**Table E.20:** Agencies with average cost per FOI request greater than \$10,000

Agency	Requests received	Average cost per request (\$)
Northern Australian Infrastructure Facility	1	71,441.05
Australian Building and Construction	7	64,438.22
Torres Strait Regional Authority	1	34,978.50
Australian Centre for International Agricultural Research	1	33,295.11
Indigenous Business Australia	24	21,364.80
Bureau of Meteorology	6	20,793.61
High Court of Australia	7	19,803.34
Airservices Australia	65	19,071.23
Australian Transport Safety Bureau	15	15,071.81
Aged Care Complaints Commissioner	13	14,019.12
National Competition Council	3	13,742.78
Department of Defence	441	13,114.31
Cancer Australia	5	12,891.65
Australian Centre for International Agricultural Research	3	12,259.32
Department of Industry, Innovation and Science	96	10,658.53
Fair Work Ombudsman	50	10,437.70
Department of the Prime Minister and Cabinet	170	10,252.08

As a general rule, the agencies with the highest average cost per request are small agencies which do not receive many FOI requests (Table E.20). As a result, they do not have the opportunity to develop the processing efficiencies that agencies with higher volumes of FOI requests do.

However, the Department of Defence, which received 441 FOI requests in 2018–19, has a high average cost per request. This is because its average staff days per request are high (20.98 per request) and its overall costs are higher than other agencies because of its general administrative, legal and training costs in 2018–19 (\$179,227).

## Impact of the IPS on agency resources

Agencies are required to provide information about the costs of meeting their obligations under the IPS.

The total reported cost attributable to compliance with the IPS in 2018–19 was \$1,254,293.47, 30.03% more than in 2017–18 (\$964,637). This increase may be largely attributable to IPS reviews conducted by agencies as a result of the OAIC conducting a survey of agencies’ IPS compliance between May and July 2018. The OAIC published its report on IPS compliance in June 2019 and intends updating guidance for agencies to assist compliance and promote proactive disclosure thereby reducing the number of FOI requests to ease the processing burden on agencies.

### Staff costs

Table E.21 shows the total reported IPS staffing across Australian Government agencies compared to last year.

**Table E.21: Total IPS staffing**

Staffing	2017–18	2018–19	% change
Staff numbers: 75–100% time on IPS matters	7	31	342.86
Staff numbers: less than 75% time on IPS matters	418	323	-22.73
Total staff hours	15,087	19,225	27.43
Total staff years	7.54	9.61	27.45

Table E.22 shows the staff costs relating to the IPS.

**Table E.22:** Estimated staff costs in relation to the IPS in 2018–19

Type of staff*	Staff years	Salary costs (\$)	Related costs (60%)	Total staff costs (\$)
IPS contact officers	8.74	436,790.42	655,185.63	1,091,976.05
SES	0.09	11,639.25	17,458.88	29,098.13
APS Level 6 and EL 1–2	0.60	43,943.17	65,914.75	109,857.92
APS Levels 1–5	0.18	7,264.95	10,897.42	18,162.37
<b>Total</b>	<b>9.61</b>	<b>499,637.79</b>	<b>749,456.68</b>	<b>1,249,094.47</b>

\* IPS contact officers are officers whose usual duties include IPS work. The other rows cover other officers involved in IPS work.

## Non-labour IPS costs

Reported IPS non-labour costs for all agencies totalled \$5,199 in 2018–19, a 49.65% decrease when compared with 2017–18.

Only three agencies (of the more than 200 agencies subject to the requirement to maintain an IPS entry) reported any expenditure on IPS during 2018–19. The Department of Foreign Affairs and Trade was the only agency to report expenditure associated with IPS training (\$3,774).

# Appendix F: Acronyms and abbreviations

Acronym or abbreviation	Expanded term
AAT	Administrative Appeals Tribunal
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
AFP	Australian Federal Police
AHRC	Australian Human Rights Commission
AIAC	Association of Information and Access Commissioners
AIC	Australian Institute of Criminology
AIC Act	<i>Australian Information Commission Act 2010</i>
AICmr	Australian Information Commissioner
ANAO	Australian National Audit Office
APP	Australian Privacy Principle
APPA	Asia Pacific Privacy Authorities
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AustLII	Australasian Legal Information Institute
CBA	Commonwealth Bank of Australia Limited
CCTV	Closed circuit television
CDR	Consumer Data Right
CII	Commissioner initiated investigation
Coles	Coles Supermarkets Australia

Acronym or abbreviation	Expanded term
CPN	Consumer Privacy Network
CR Code	<i>Privacy (Credit Reporting) Code 2014 (v2)</i>
Data-matching Act	<i>Data-matching Program (Assistance and Tax) Act 1990</i>
DESSFB	Department of Employment, Skills, Small and Family Business
DHS	Department of Human Services
DIPB	Department of Immigration and Border Protection
DVA	Department of Veterans' Affairs
DVS	Document Verification Service
EOT	Extensions of time
FOI	Freedom of information
FOI Act	<i>Freedom of Information Act 1982</i>
FTE	Full-time equivalent
GST	Goods and Services Tax
IC	Information Commissioner
ICIC	International Conference of Information Commissioners
ICDPPC	International Conference of Data Protection and Privacy Commissioners
ICON	Information Contact Officer Network
ICT	Information and communications technology
Information Commissioner	Australian Information Commissioner, within the meaning of the <i>Australian Information Commissioner Act 2010</i> .
Information Privacy Act	<i>Information Privacy Act 2014 (ACT)</i>
IPS	Information Publication Scheme
KMP	Key management personnel
MOU	Memorandum of Understanding

Acronym or abbreviation	Expanded term
MYEFO	Mid-Year Economic and Fiscal Outlook
My Health Records Act	<i>My Health Records Act 2012</i>
National Health Act	<i>National Health Act 1953</i>
National Health (Privacy) Rules	<i>National Health (Privacy) Rules 2018</i>
NDB	Notifiable Data Breaches
NEIDM	Non-Employment Income Data Matching
NFBMC	National Facial Biometric Matching Capability
NSW	New South Wales
NPP	National Privacy Principle
OAIC	Office of the Australian Information Commissioner
PAA	Privacy Authorities Australia
PAW	Privacy Awareness Week
PAYG	Pay-As-You-Go
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	<i>Public Governance, Performance and Accountability Rule 2014</i>
PID	Public interest determination
PPN	Privacy Professionals' Network
Privacy Act	<i>Privacy Act 1988</i>
Privacy Code	<i>Privacy (Australian Government Agencies — Governance) APP Code 2017</i>
RACGP	Royal Australian College of General Practitioners
Registrar	Student Identifiers Registrar
SA	South Australia
SES	Senior Executive Service



Acronym or abbreviation	Expanded term
SME	Small and medium enterprises
TPPs	Territory Privacy Principles
USI	Unique Student Identifiers
WHS	Workplace health and safety
Woolworths	Woolworths Limited

# Appendix G: Correction of material errors

Below are corrections of errors in the *Office of the Australian Information Commissioner Annual Report 2017–18*.

## Page 98 — Workplace relations

The sentence: ‘In 2017–18, seven Executive members and other staff received performance pay or were under individual flexibility arrangements, Australian workplace agreements or common law contracts’; should read as follows: ‘In 2017–18, seven Executive members and other staff were under individual flexibility arrangements, Australian workplace agreements or common law contracts.’

## Page 145 — Australian Digital Health Agency

The sentence: ‘For the 2017–18 financial year, the value of the MOU was \$2,076,649.94 (GST exclusive)’; should read as follows: ‘For the 2017–18 financial year, the OAIC received \$1,688,343.88 (GST exclusive).’

## Appendix H: List of requirements

PGPA Rule reference	Description	Requirement	Part of report
<b>17AD(g)</b>	<b>Letter of transmittal</b>		
17AI	A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with s 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	1
<b>17AD(h)</b>	<b>Aids to access</b>		
17AJ(a)	Table of contents.	Mandatory	2
17AJ(b)	Alphabetical index.	Mandatory	214
17AJ(c)	Glossary of abbreviations and acronyms.	Mandatory	200
17AJ(d)	List of requirements.	Mandatory	205
17AJ(e)	Details of contact officer.	Mandatory	Inside cover
17AJ(f)	Entity's website address.	Mandatory	Inside cover
17AJ(g)	Electronic address of report.	Mandatory	Inside cover
<b>17AD(a)</b>	<b>Review by accountable authority</b>		
17AD(a)	A review by the accountable authority of the entity.	Mandatory	8–11
<b>17AD(b)</b>	<b>Overview of the entity</b>		
17AE(1)(a)(i)	A description of the role and functions of the entity.	Mandatory	6
17AE(1)(a)(ii)	A description of the organisational structure of the entity.	Mandatory	16
17AE(1)(a)(iii)	A description of the outcomes and programmes administered by the entity.	Mandatory	27–93

PGPA Rule reference	Description	Requirement	Part of report
17AE(1)(a)(iv)	A description of the purposes of the entity as included in corporate plan.	Mandatory	7
17AE(1)(aa)(i)	Name of the accountable authority or each member of the accountable authority.	Mandatory	16
17AE(1)(aa)(ii)	Position title of the accountable authority or member of the accountable authority within the reporting period	Mandatory	16
17AE(1)(aa)(iii)	Period as the accountable authority or member of the accountable authority within the reporting period.	Mandatory	16
17AE(1)(b)	An outline of the structure of the portfolio of the entity.	Portfolio departments – mandatory	6, 16, 96
17AE(2)	Where the outcomes and programs administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change.	If applicable, mandatory	N/A
<b>17AD(c)</b>	<b>Report on the performance of the entity</b>		
	<i>Annual performance statements</i>		
17AD(c)(i); 16F	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and s 16F of the Rule.	Mandatory	27–93
17AD(c)(ii)	<i>Report on financial performance</i>		
17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory	109–147
17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	150–152

PGPA Rule reference	Description	Requirement	Part of report
17AF(2)	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	If applicable, mandatory	109–147, 150–152
<b>17AD(d)</b>	<b>Management and accountability</b>		
	<i>Corporate governance</i>		
17AG(2)(a)	Information on compliance with s 10 (fraud systems)	Mandatory	106
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	1
17AG(2)(b)(ii)	A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place.	Mandatory	1
17AG(2)(b)(iii)	A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity.	Mandatory	1
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	92

PGPA Rule reference	Description	Requirement	Part of report
17AG(2)(d) – (e)	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to noncompliance with finance law and action taken to remedy noncompliance.	If applicable, mandatory	N/A
<i>External scrutiny</i>			
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	N/A
17AG(3)(a)	Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity.	If applicable, mandatory	N/A
17AG(3)(b)	Information on any reports on operations of the entity by the AuditorGeneral (other than report under s 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, mandatory	N/A
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, mandatory	N/A
<i>Management of human resources</i>			
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	99, 101
17AG(4)(aa)	Statistics on the entity's employees on an ongoing and non-ongoing basis, including the following: <ul style="list-style-type: none"> <li>▪ statistics on full-time employees</li> <li>▪ statistics on part-time employees</li> <li>▪ statistics on gender</li> <li>▪ statistics on staff location.</li> </ul>	Mandatory	99–100

PGPA Rule reference	Description	Requirement	Part of report
17AG(4)(b)	<p>Statistics on the entity's APS employees on an ongoing and nonongoing basis; including the following:</p> <ul style="list-style-type: none"> <li>▪ statistics on staffing classification level</li> <li>▪ statistics on fulltime employees</li> <li>▪ statistics on parttime employees</li> <li>▪ statistics on gender</li> <li>▪ statistics on staff location</li> <li>▪ statistics on employees who identify as Indigenous.</li> </ul>	Mandatory	99–100
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the <i>Public Service Act 1999</i> .	Mandatory	102
17AG(4)(c)(i)	Information on the number of SES and nonSES employees covered by agreements etc identified in paragraph 17AG(4)(c).	Mandatory	100
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	100
17AG(4)(c)(iii)	A description of non-salary benefits provided to employees.	Mandatory	102
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	If applicable, mandatory	N/A
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, mandatory	N/A
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, mandatory	N/A

PGPA Rule reference	Description	Requirement	Part of report
17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, mandatory	N/A
<i>Assets management</i>			
17AG(5)	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities.	If applicable, mandatory	N/A
<i>Purchasing</i>			
17AG(6)	An assessment of entity performance against the <i>Commonwealth Procurement Rules</i> .	Mandatory	104–105
<i>Consultants</i>			
17AG(7)(a)	A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	104
17AG(7)(b)	A statement that “ <i>During [reporting period], [specified number] new consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]</i> ”.	Mandatory	104



PGPA Rule reference	Description	Requirement	Part of report
17AG(7)(c)	A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged.	Mandatory	104
17AG(7)(d)	A statement that <i>'Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.'</i>	Mandatory	105
<b><i>Australian National Audit Office access clauses</i></b>			
17AG(8)	If an entity entered into a contract with a value of more than \$100,000 (inclusive of GST) and the contract did not provide the AuditorGeneral with access to the contractor's premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, mandatory	N/A
<b><i>Exempt contracts</i></b>			
17AG(9)	If an entity entered into a contract or there is a standing offer with a value greater than \$10,000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	If applicable, mandatory	N/A

PGPA Rule reference	Description	Requirement	Part of report
<i>Small business</i>			
17AG(10)(a)	A statement that “[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance’s website.”	Mandatory	105
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	105
17AG(10)(c)	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that “[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.”	If applicable, mandatory	105
<i>Financial statements</i>			
17AD(e)	Inclusion of the annual financial statements in accordance with subsection 43(4) of the Act.	Mandatory	109–147
<i>Executive remuneration</i>			
17AD(da)	Information about executive remuneration in accordance with Subdivision C of Division 3A of Part 2–3 of the Rule.	Mandatory	153–156

PGPA Rule reference	Description	Requirement	Part of report
<b>17AD(f)</b>	<b>Other mandatory information</b>		
17AH(1)(a)(i)	If the entity conducted advertising campaigns, a statement that “ <i>During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity’s website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance’s website.</i> ”	If applicable, mandatory	106
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, mandatory	N/A
17AH(1)(b)	A statement that “ <i>Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity’s website].</i> ”	If applicable, mandatory	106
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	106
17AH(1)(d)	Website reference to where the entity’s Information Publication Scheme statement pursuant to Part II of FOI Act can be found.	Mandatory	107
17AH(1)(e)	Correction of material errors in previous annual report	If applicable, mandatory	204
17AH(2)	Information required by other legislation	Mandatory	160–199

## Appendix I: Index

### A

acronyms and abbreviations, 200–3  
 Administrative Appeals Tribunal (AAT), 141, 164, 191–2  
 Administrative Arrangements Order, 166  
 advice issued, 69–70  
 advertising and market research, 106  
 agency resource statement, 150–2  
 annual performance statement, 28  
*Annual Report of the Australian Information Commissioner's Activities in Relation to Digital Health 2018–19*, 64, 69  
 Asia-Pacific Economic Cooperation, 9  
 Asia Pacific Privacy Authorities (APPA), 20  
 assessments, see privacy assessments  
 Assistant Commissioner, 96  
     remuneration, 155  
 Association of Information Access  
     Commissioners (AIAC), 20, 24, 48  
 Attorney-General's Department, 70  
 Audit Committee, 97  
 Australian Capital Territory (ACT)  
     Government, 67, 158  
 Australian Competition and Consumer Commission (ACCC), 9–10, 32, 42, 71  
 Australian Cyber Security Centre, 34  
 Australian Digital Health Agency, 157  
     correction of material error, 204  
 Australian Federal Police, 14, 41, 82, 87  
 Australian Financial Complaints Authority (AFCA), 42  
 Australian Government, see government agencies  
 Australian Government Solicitor, 45, 47  
 Australian Human Rights Commission (AHRC), 157–8  
 Australian Information Commissioner, see Commissioner

*Australian Information Commissioner Act 2010* (AIC Act), 6

Australian Privacy Principles (APPs), 38, 49–50, 52, 160

Australian Retail Credit Association, 42

Australian Taxation Office, 68–9, 166

### C

case study, 51, 56, 58–9, 63, 71, 79–83, 86  
 charges,

    freedom of information requests, 92, 183–5

    Information Commissioner (IC) reviews, 77, 164

Coles Supermarkets Australia, 66

Commissioner, 16–17, 96

    annual performance statement, 28

    determinations, 41–2, 60–1, 72–3, 88

    quotes, 23, 74, 90

    network, 20–2

    privacy investigations, 65

    recognised external dispute resolution scheme, 59

    remuneration, 155

    review decisions, 78, 186–190

    review of year, 8–11

    vexatious applicant declarations, 85–6

Commissioner initiated investigations (CIIs), 35–6, 46, 65

Commissioner's review, 8–11

Common Thread Network, 20

Commonwealth Bank of Australia Ltd, 35

Communications and Media Law Association, 39

complaint handling, 6, 36–7, 46, 59

complaints, see Australian Privacy Principles, freedom of information complaints, government agencies, privacy complaints,

sectors, timeliness in FOI matters,  
timeliness in privacy matters  
consultants, 104–5  
Consultation Forum, 102  
Consumer Data Right, 42–3, 70  
    case study, 71  
Consumer Privacy Network (CPN), 19–20  
contracts, 102, 104, 122, 157–59  
corporate governance, 96–7  
corporate services, 97  
correction of material errors in Annual Report  
    2017–18, 204  
credit reporting, 32, 39, 42, 50–1, 53, 55–6,  
    60, 63, 69

## D

Data Standards Body (Data61), 10, 42, 71  
data breach notifications, 33, 62–4  
    voluntary, 33, 64  
data matching, 68–9  
*Data-matching Program (Assistance and Tax)  
    Act 1990* (Data-matching Act), 69  
Department of Defence, 14  
Department of Education and Training,  
    67, 158  
Department of Home Affairs, 14, 41, 68,  
    159, 165–6  
Department of Human Services (DHS),  
    14, 68–9, 79–81, 166  
Department of Veterans' Affairs, 14, 68, 166  
Deputy Commissioner, 96, 153  
    remuneration, 155  
determinations, 60–1, 72–3, 88  
digital health  
    assessments, 69, 163  
    data breach notifications, 64  
    Memorandum of Understanding, 157  
Digital Platforms Inquiry, 10, 32  
disability reporting, 106  
disclosure log, 87–8, 92, 185–6  
Dispute Resolution Branch, 17, 103  
Diversity Committee, 103  
Document Verification Service, 66

## E

employees, *see* staff  
employment statistics, 100  
enabling legislation, 96  
enforceable undertaking, 30, 35  
Enhanced Welfare Payment Integrity,  
    68–9, 163  
enquiries  
    freedom of information, 15, 47, 76  
    media, 40, 75  
    privacy, 13, 39, 50–3  
    social media, 40  
Enterprise Agreement 2016–19, 102  
environment, ecologically sustainable  
    development, 107  
errors in Annual Report 2017–18, 204  
European Union's General Data Protection  
    Regulation, 10, 54  
events, 21–2, 47, 88–90  
    *see also* Privacy Awareness Week (PAW),  
        Right to Know Day  
Executive, 17, 96, 103, 153–6  
exemption, 82, 87, 92, 172, 176–180  
extension of time FOI notification or request,  
    84–5  
external dispute resolution schemes, 59  
external scrutiny, 98

## F

Facebook, 24, 37  
finance  
    amounts paid and received under a  
        MOU, 157–9  
    remuneration, 155–6  
financial performance, 123  
financial position, 127  
financial statements, 109–147  
FOI Guidelines, 44, 81–3, 87, 180, 185–6

fraud, 1, 97, 106

freedom of information

- see *also* information access rights, Information Commissioner reviews
- agency resources, 87–92
- case studies, 79–83, 86
- enquiries, 47, 76–7
- extensions of time, 84–5
- processing statistics received from
  - Australian Government agencies and ministers, 91–2, 164–199
- vexatious applicant declarations, 85–6

freedom of information complaints, 11, 15, 46, 83–4

- timeliness, 15, 46

*Freedom of Information (Disclosure Log — Exempt Documents) Determination 2018*, 88

freedom of information enquiries, 11, 15, 47, 76–7

freedom of information performance, 76–92

funding, 135

## G

Global Privacy Enforcement Network, 20

government agencies (Australian Government)

- assessment, 67
- charges for FOI, 92, 183–5, 193–5
- data matching, 68–9
- FOI processing statistics of, 91–2, 164–99
- Information Publication Scheme, 44

grant programs, 106

guidelines, see FOI Guidelines

## H

health service provider, 34, 51, 56

human resources, 99–103, 138

## I

Indigenous staff, 100, 103

information access rights, 7, 9, 48, 91–2

Information Commissioner see Commissioner

Information Commissioner reviews

- (IC reviews), 14, 45–6, 77–83
  - case studies, 79–83
  - timeliness, 14
- informal resolution, 78
- under s 55K of the FOI Act, 78

Information Contact Officer Network (ICON), 19, 45, 47, 88–9

*Information Matters*, 24, 45, 47

*Information Privacy Act 2014* (ACT), 50, 55

Information Publication Scheme (IPS), 10, 44, 91, 107, 198–99

International Conference of Data Protection and Privacy Commissioners, 9, 21

International Conference of Information Commissioners, 10, 21

## K

key management personnel, see Executive

## L

learning and development, 101

Legal Aid NSW, 25, 39

legislative instrument, 42, 72–3

loyalty programs, 66

## M

media and media coverage, 24–5, 40, 48, 75, 90

- see *also* social media

Memorandum of Understanding (MOU), 50, 67, 157–9

minister responsible for OAIC, 96

My Health Record

- see *also* Notifiable Data Breaches scheme
- assessments, 69
- data breach notifications, 33

*My Health Records Act 2012* (My Health Record Act), 69

## N

National Data Advisory Council, 10

*National Health (Privacy) Rules 2018*, 73

networks, 18–21

Non-Employment Income Data Matching (NEIDM) program, 68

non-English speaking background, staff from, 100, 103

non-salary benefits, 102

Notifiable Data Breaches scheme, 9, 13, 31, 33–4, 40, 53, 62–4, 69  
case studies, 63  
My Health Record, 64  
webinar, 25, 34

*Notifiable Data Breaches Scheme 12-Month Insights Report*, 9, 31, 34, 62, 72

newsletters, 24, 32–3, 45, 47, 88

## O

Open Government Partnership Australia, 10  
outcome and program structure, 6

## P

panel discussion, *see* speech or speeches

Patrick, Rex, 83

Pay-As-You-Go (PAYG) program, 68

performance, 29–48

performance measures

freedom of information, 44–8

privacy, 31–43

performance pay, correction of material error, 204

performance statement, *see* annual performance statement

podcast, 25

Portfolio Budget Statement, 6

portfolio structure, 96

presentation, *see* speech or speeches

privacy assessments, 37–8, 162–63

data matching, 68–9

finance, 66

government, 67

Memorandum of Understanding, 157–9

statistics, 162–3

telecommunications, 67

Privacy Authorities Australia (PAA), 20

Privacy Awareness Week (PAW), 22–3, 25, 33, 37, 40

podcast, 25

speech, 74

Privacy Code, 10, 31, 67, 69, 72, 75

Privacy Challenge, 23

privacy complaints, 12, 36, 53–9, 160–1

by APP issue raised, 160

by sector, 56

case studies, 56, 58–9

closed each month, 55

compensation paid, 161

determinations, 60–1

issues raised in, 55

Memorandum of Understanding, 157–9

received each month, 54

remedies agreed, 161

resolving, 57–9

statistics, 160–1

timeliness, 12

*Privacy (Credit Reporting) Code 2014* (v2)

(CR Code), 32, 42

privacy enquiries, 13, 39, 50–3

case studies, 51

issues about, 50

timeliness, 39

privacy performance, 49–75

Privacy Professionals Network (PPN), 18–19, 32–3

procurement, 104–5

*Public Governance, Performance and*

*Accountability Act 2013* (PGPA Act), 28, 96, 112

*Public Governance, Performance and*

*Accountability Rule 2014* (PGPA Rule), 153

public interest determination, 41–2  
purpose, 7

## R

regulatory action policy, 36, 38  
remuneration, 100, 138–40, 153–6  
resources, 72, 87–92  
review of FOI decisions, 186–90  
    *see also* Information Commissioner  
    reviews  
Right to Know Day, 24, 47–8, 89–90  
risk management, 97  
Royal Australian College of General  
Practitioners, 34, 39

## S

sectors, 12  
    complaints about, 12, 56  
    events, 21–2  
    privacy assessments of, 66–7  
    survey of, 38  
Senior Executive Service (SES), *see* Executive  
Seven Network (Operations) Limited, 83, 87  
small business, 105  
social media, 24–5, 40, 48  
    *see also* media and media coverage  
speech or speeches, 21, 23, 74–5  
staff, *see also* Executive, remuneration  
    benefits, 102  
    diversity, 103  
    payments to, 138–140  
    employment type, 100  
    Consultation Forum, 102  
    salaries, 100, 155  
    turnover, 99  
    work health and safety, 103  
    workplace relations, 102  
statutory officer holder, 16, 100, 103  
structure, 16–17  
    *see also* portfolio structure, outcome  
    and program structure  
submissions, 70–1

## T

Territory Privacy Principles (TPPs), 50, 53, 67  
timeliness in FOI matters, 171–2  
    complaints, 46  
    Information Commissioner (IC)  
        reviews, 45  
    written enquiries, 47  
timeliness in privacy matters  
    Commissioner initiated investigations, 35  
    complaints, 36  
    My Health Record data breach  
        notifications, 33  
    Notifiable Data Breach Scheme  
        notifications, 33  
    voluntary data breach notifications, 33  
    written enquiries, 39  
Twitter, 25, 37

## U

undertaking, enforceable, 35  
unique student identifier, 67

## V

vexatious applicant declaration, 85–6

## W

webinar  
    Notifiable Data Breaches scheme, 25, 34  
    Royal Australian College of General  
        Practitioners, 34  
website, 41  
Wilson Asset Management (International)  
Pty Ltd, 35  
Wolters Kluwer, 40  
Woolworths Limited, 66  
work health and safety, 103  
workplace diversity, 103  
workplace relations, 102  
    correction of material error, 204





[oaic.gov.au](http://oaic.gov.au)

Office of the Australian Information Commissioner

1300 363 992

[enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

@OAICgov



**Australian Government**  
**Office of the Australian**  
**Information Commissioner**

# Office of the Australian Information Commissioner

**Annual Report 2019–20**

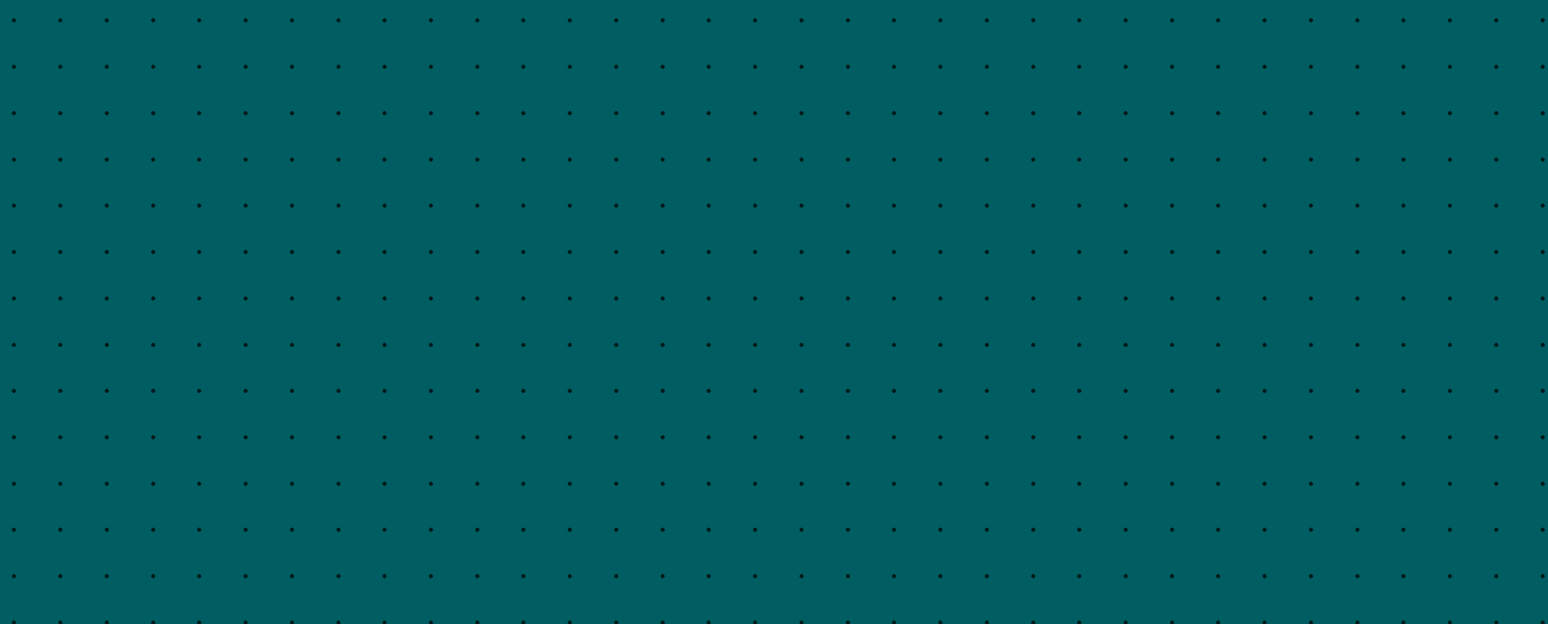


**OAIC**



# Office of the Australian Information Commissioner

**Annual Report 2019–20**



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## Contact

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**Website:** [oaic.gov.au](http://oaic.gov.au)

**Phone:** 1300 363 992

**Mail:** Director, Strategic Communications  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

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Australian Government

Office of the Australian Information Commissioner

**The Hon. Christian Porter MP**

Attorney-General  
Parliament House  
Canberra ACT 2600

Dear Attorney

I am pleased to provide the Office of the Australian Information Commissioner's (OAIC's) Annual Report 2019–20 for the year ending 30 June 2020.

This report has been prepared for the purposes of s 46 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which requires that I prepare and provide an annual report to you for presentation to the Parliament.

Section 30 of the *Australian Information Commissioner Act 2010* (AIC Act) also requires the Information Commissioner to prepare an annual report on the OAIC's operations, including a report on freedom of information matters (defined in s 31 of the AIC Act) and privacy matters (defined in s 32 of the AIC Act).

The freedom of information matters include a summary of the data collected from Australian Government ministers and agencies in relation to activities under the *Freedom of Information Act 1982*.

I certify that the OAIC has prepared a fraud risk assessment and fraud control plan. We also have a number of appropriate fraud prevention, detection, investigation, reporting and data collection mechanisms in place. The OAIC has taken all reasonable measures to minimise the incidence of fraud.

I certify that this report has been prepared in line with the *Public Governance, Performance and Accountability Amendments (Non-Corporate Commonwealth Entity Annual Reporting) Rule 2016*.

Yours sincerely

**Angelene Falk**  
Australian Information Commissioner  
Privacy Commissioner  
21 September 2020

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## Contents

Part 1: Overview .....	5
About the OAIC .....	6
Outcome and program structure .....	6
Purpose .....	7
Commissioner's review .....	8
Our year at a glance .....	12
Our structure .....	16
Part 2: Performance .....	21
Our annual performance statement .....	22
Strategic Priority 1 .....	27
Strategic Priority 2 .....	33
Strategic Priority 3 .....	62
Strategic Priority 4 .....	68



Part 3: Management and accountability .....	77
Corporate governance .....	78
External scrutiny .....	81
Human resources .....	81
Procurement .....	85
Other requirements .....	86
Part 4: Financial statements .....	87
Part 5: Appendices .....	127
Appendix A: Agency resource statement and resources for outcomes .....	128
Appendix B: Executive remuneration .....	130
Appendix C: Memorandums of understanding .....	132
Appendix D: Privacy statistics .....	134
Appendix E: FOI statistics .....	138
Appendix F: Acronyms and abbreviations .....	162
Appendix G: Correction of material errors .....	165
Appendix H: List of requirements .....	166
Index .....	171



# Part 1

## Overview

About the OAIC .....	6
Outcome and program structure .....	6
Purpose .....	7
Commissioner's review .....	8
Our year at a glance .....	12
Our structure .....	16

## About the OAIC

The Office of the Australian Information Commissioner (OAIC) is an independent statutory agency within the Attorney-General's portfolio, established under the *Australian Information Commissioner Act 2010*.

Our key role is to meet the needs of the Australian community in relation to the regulation of privacy and freedom of information. We do this by:

- ensuring proper handling of personal information under the *Privacy Act 1988* (Privacy Act) and other legislation
- protecting the public's right of access to documents under the *Freedom of Information Act 1982* (FOI Act)
- performing strategic functions relating to information management within the Australian Government under the *Australian Information Commissioner Act 2010* (AIC Act).

## Outcome and program structure

Our Portfolio Budget Statement describes the OAIC's outcome and program framework.

Outcome	Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of Information Commissioner, freedom of information and privacy functions.
Program 1.1	Complaint handling, compliance and monitoring, and education and promotion.

Our annual performance statement details our activities and key deliverables, and measures our performance against our Portfolio Budget Statement targets and the strategic priorities set out in the *OAIC Corporate Plan 2019–20*:

- Advance online privacy protections for Australians
- Influence and uphold privacy and information access rights frameworks
- Encourage and support proactive release of government-held information
- Take a contemporary approach to regulation.

## Purpose

Our purpose is to promote and uphold privacy and information access rights.

We do this by:

- making sure that Australian Government agencies and Australian Privacy Principles (APP) entities comply with the Privacy Act and other laws when handling personal information
- protecting the public's right of access to documents under the FOI Act
- carrying out strategic information management functions within the Australian Government under the AIC Act.

Our regulatory activities include:

- conducting investigations
- handling complaints
- reviewing decisions made under the FOI Act
- monitoring agency administration
- advising the public, organisations and agencies.



## Commissioner's review



The past 12 months have brought unprecedented challenges, with Australia's worst bushfire season on record soon followed by the COVID-19 pandemic. These

seismic events have had a significant impact on the everyday lives of us all.

They have also highlighted the importance of maintaining public trust and confidence in the handling of personal information and in providing access to government-held information, both vital tools in our emergency response.

The *OAIC's Corporate Plan for 2019–20* outlined a vision to increase public trust and confidence in the protection of personal information and access to government-held information. This has never been so important, as we sought solutions to halt the spread of the virus.

As the use of both personal information and digital solutions became necessary to respond to the pandemic and adjust to remote work, learning and social engagement, privacy issues also came to the fore.

Our engagement allowed us to harness the experience of data protection authorities around the world in grappling with the privacy impacts of new and emerging responses to COVID-19. Our international perspective and understanding informed and strengthened our advice to government, regulated entities and the community.

The OAIC has also taken on new responsibilities for overseeing privacy safeguards built into the COVIDSafe app system. We advised the Australian Government as it considered the privacy implications of the app and recommended legislative privacy protections to instil the highest level of trust and confidence in the community.

The amendments to the *Privacy Act 1988* provide strong privacy protections and expand our regulatory oversight role to cover state and territory access to COVIDSafe data. The publication of the Privacy Impact Assessment for the app and the government's response was an important transparency measure and sets a benchmark for government initiatives involving personal information.

In response to the challenges created by the pandemic, we have produced a range of privacy guidance for business, Australian Government agencies and individuals, including how to safeguard personal information in changed work environments and when venues are collecting information for contact tracing purposes.

The health and economic crisis caused by the coronavirus has created opportunities for greater

transparency through proactive release and real-time provision of information. This approach by government demonstrates how transparency can increase community confidence and influence behaviour.

At the same time, the impact of the outbreak had the potential to affect agencies' ability to meet statutory timeframes for processing freedom of information requests. We have recommended a range of measures to ensure agencies continue to meet their obligations, along with advice for people lodging FOI requests.

Earlier this year, we joined with our international and domestic counterparts to reinforce the importance of documenting decisions and providing access to government-held information through the pandemic and beyond. Our contribution to global transparency efforts includes our ongoing role in Australia's Open Government Partnership, as a member of the working group for the third Open Government National Action Plan.

## Regulatory action

In operating as a contemporary regulator, our regulatory posture and approach is evidence-based, proportionate and seeks to respond to community expectations in addressing risk. In privacy, as in access to information, we exercise our regulatory functions in a way that helps entities to understand and voluntarily comply with obligations. We also take action that deters and remediates breaches of privacy and information access rights where they occur.

Following a detailed investigation, including cooperation with international authorities, in 2019–20 the OAIC launched our first civil penalty action, against Facebook. This action is part of the OAIC's ambition to advance online privacy protections for all Australians.

The government's response to the Digital Platforms Inquiry, carried out by the Australian Competition and Consumer Commission (ACCC) and informed by the OAIC's submissions and advice on privacy-related issues, has committed to a review of the Privacy Act. We have established a dedicated project team to engage with stakeholders and provide policy advice to government. We look forward to working cooperatively over the year ahead to advance a privacy law framework that is fit for purpose for the digital age.

We also worked closely with the ACCC in carrying out a significant program of work to implement the Consumer Data Right, which commenced on 1 July 2020. Our joint compliance and enforcement policy outlines how we will apply the CDR Rules and uphold the privacy safeguards to ensure consumer data is protected as the system expands.

The Notifiable Data Breaches scheme remains a focus for our agency. The scheme was introduced in February 2018 to strengthen consumer protection and elevate the security posture of organisations and agencies who handle personal information. In 2019–20 we recorded an 11% increase in notifications to the OAIC and to individuals at risk of harm.

We are engaging closely with notifying entities to understand the causes of breaches and ensure measures are put in place to rectify them and mitigate future incidents. We have also opened a number of Commissioner-initiated investigations to examine serious or systemic issues and evaluate compliance with the requirements of the scheme and the Privacy Act.

## Regulatory functions

A highlight of 2019–20 is the success of our program to eliminate a backlog of privacy cases created by sustained increases in complaints over recent years. By implementing additional efficiency measures,

and with the support of additional funding, we closed 3,366 privacy complaints during the financial year – a 15% improvement on 2018–19.

In a reversal of the recent trend, the number of incoming privacy complaints declined by 19% in 2019–20. The significant drop recorded in the second half of the reporting period is likely to be due to the COVID-19 pandemic.

Applications for Information Commissioner (IC) review of FOI decisions continued to grow in 2019–20, increasing by 15% to 1,066. Following the COVID-19 outbreak, we also recorded a significant increase in agency applications for extensions of time to process FOI requests.

While the OAIC continues to face resourcing challenges in the FOI area, we implemented further process improvements and resolved more IC reviews during the reporting period than ever before. We achieved a 26% improvement, resolving 829 IC reviews in 2019–20.

The significant increase in the number of applications after sustained increases in previous years, along with our focus on reducing the number of cases over 12 months old, meant we finalised 72% of IC reviews within 12 months, short of our target of 80%.

The OAIC also delivered a wide range of guidance for regulated entities and the community during 2019–20 to improve awareness and practice across our core regulatory functions. We led campaigns for Privacy Awareness Week and Right to Know Day, engaging the public, practitioners and regulated entities to promote privacy and access to information rights and responsibilities.

## Building trust and confidence

Australia's response to the pandemic has demonstrated what can be achieved at speed when there is a common goal in the public interest. I would like to express my appreciation to the staff of the OAIC, who have consistently shown great commitment, flexibility and focus in working to advance privacy rights and access to information throughout this period.

The regulatory areas that we oversee are a key part of the solution to navigating through these challenging times. The examples of privacy by design, strong privacy protections and government transparency during this period not only support a sense of optimism about our path to recovery, they also set an encouraging precedent for the future of information management.



**Angelene Falk**

Australian Information Commissioner  
Privacy Commissioner  
16 September 2020





## Our year at a glance

### Privacy complaints



**87%**   
of all privacy complaints were finalised within  
12 months against a target of 80%

**Average time** taken to finalise a  
privacy complaint

**4.7 months** 

Most privacy complaints came from the  
following sectors:

Australian Government

**12%**



Finance (incl. superannuation)

**11%**



Health service providers

**11%**



Retail

**6%**



Telecommunications

**6%**



Online services

**5%**



Percentages have been rounded to the nearest whole number.

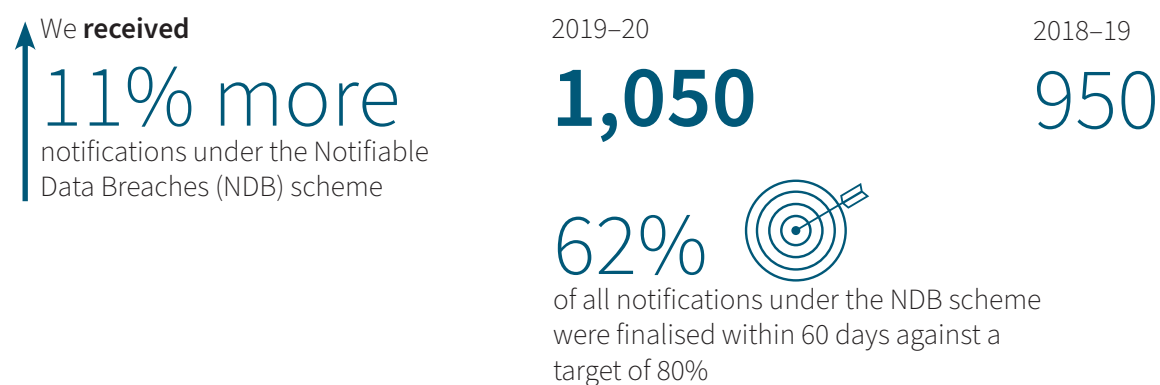
## Privacy complaints



## Privacy enquiries



## Notifiable Data Breaches scheme



Percentages have been rounded to the nearest whole number. End-of-year statistics may differ from 6-monthly publication statistics.

## Our year at a glance

### FOI enquiries

We **handled**  
↓  
**2,297**  
FOI enquiries

2019–20

**20%**

decrease  
from 2018–19



phone

**1,524**



written

**772**



in person

**1**

### FOI complaints

We **received**  
↑  
**79% more**  
FOI complaints

2019–20

**109**

2018–19

**61**

### FOI complaints

We **finalised**  
↑  
**223% more**  
FOI complaints

2019–20

**71**

2018–19

**22**

**52%** 

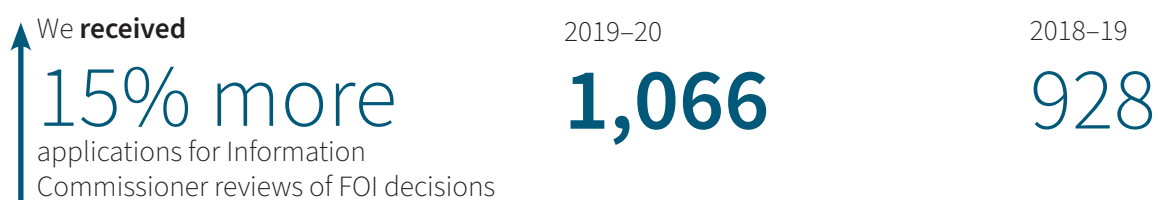
of all FOI complaints were finalised within  
12 months against a target of 80%

**Average time** taken to close an  
FOI complaint

**11.6 months** 

Percentages have been rounded to the nearest whole number.

## IC reviews



The top 5 agencies involved in Information Commissioner reviews were:

Department of Home Affairs



Services Australia



Australian Federal Police




Department of Defence



Department of Foreign Affairs and Trade



**72%**   
of applications for Information Commissioner review were finalised within 12 months against a target of 80%

**Average time** taken to finalise an Information Commissioner review

**8.1 months**



Percentages have been rounded to the nearest whole number.

## Our structure

The OAIC is headed by the Australian Information Commissioner, a statutory officer appointed by the Governor-General. The Commissioner has a range of powers and responsibilities outlined in the AIC Act, and also exercises powers under the FOI Act, the Privacy Act and other privacy-related legislation.

.....

The Australian Information Commissioner is the agency head accountable for strategic oversight and the OAIC's regulatory, strategic, advisory and dispute resolution functions, as well as financial and governance reporting.

Angelene Falk was appointed by the Governor-General to the roles of Australian Information Commissioner and Privacy Commissioner on 16 August 2018. She was acting Australian Information Commissioner and Privacy Commissioner from 24 March 2018 to 15 August 2018.

## Angelene Falk

Angelene Falk has held senior positions in the OAIC since 2012, including serving as Deputy Commissioner from 2016 to March 2018. Over the past decade, she has worked extensively with Australian Government agencies, across the private sector and internationally, at the forefront of addressing regulatory challenges and opportunities presented by rapidly evolving technology and potential uses of data. Her experience extends across industries and subject matter, including data breach prevention and management, data sharing, credit reporting, digital health and access to information.

She holds a Bachelor of Laws with Honours and a Bachelor of Arts from Monash University and a Diploma in Intellectual Property Law from Melbourne University.



## Support to the Commissioner

The Commissioner is supported by an Executive team of 4 Senior Executive Services (SES) positions and expert staff, working within the Dispute Resolution, Regulation and Strategy, and Corporate branches, and the FOI Regulatory Group.

The Dispute Resolution branch is responsible for privacy dispute resolution, responding to privacy enquiries, conducting Commissioner-initiated investigations and administering the Notifiable Data Breaches scheme.

The Regulation and Strategy branch is responsible for providing strategic policy advice and guidance to individuals, government and business. This includes examining legislation and other proposals that may have an impact on privacy and managing the program of work under the OAIC's International Strategy. It also undertakes proactive regulatory activities by auditing privacy practices in industry and government agencies. The branch is responsible for regulating privacy safeguards under the Consumer Data Right system and monitoring the privacy aspects of the COVIDSafe system.

The FOI Regulatory Group is responsible for undertaking Information Commissioner reviews, monitoring, investigating and reporting on compliance through FOI complaints and Commissioner-initiated FOI investigations, deciding applications for vexatious applicant declarations and extensions of time, collecting information

and statistics from agencies and ministers about FOI matters and providing advice and guidance on FOI and information access related matters.

The Corporate branch includes legal services, strategic communications and corporate services with people and culture, governance, finance and information management services functions.

## Deputy Commissioner — Elizabeth Hampton

As Deputy Commissioner, Elizabeth Hampton is the principal adviser to the Australian Information Commissioner and Privacy Commissioner.

Ms Hampton joined the OAIC in January 2019 and brings more than 25 years' experience in senior positions in the Australian Public Service. She served as Industry Complaints Commissioner with the Civil Aviation Safety Authority from 2010 to 2014, when she was appointed to the Australian Customs and Border Protection Service as National Manager, Integrity and Professional Standards and Special Integrity Adviser to the Chief Executive Officer.

Ms Hampton held a variety of senior executive positions within the Australian Government Home Affairs portfolio prior to joining the OAIC. Previously, she worked at Centrelink, the Office of the Commonwealth Ombudsman and the Australian Competition and Consumer Commission (ACCC).

Ms Hampton holds a Bachelor of Arts from the University of Sydney, a Diploma of Law and a Graduate Diploma in Legal Practice.

## Assistant Commissioner, Regulation and Strategy — Melanie Drayton

Melanie Drayton leads the OAIC's Regulation and Strategy branch. Ms Drayton was appointed Assistant Commissioner in 2016 after holding a range of positions within the OAIC, leading both reactive and proactive regulatory activities and strategic policy work. She has supported the mission of the OAIC in preparing guidance, drafting legislative instruments, and promoting the requirements of the Privacy Act and FOI Act.

Before joining the OAIC (the former Office of the Privacy Commissioner) in 2001, Ms Drayton worked for the NSW Government and community sector. She holds a Bachelor of Laws and a Bachelor of Arts from the University of Technology, Sydney and a Graduate Certificate in Legal Practice. She was admitted as a legal practitioner to the Supreme Court of NSW in 2001.

## Assistant Commissioner, Corporate — Ruth Mackay PSM

Ruth Mackay leads the OAIC's Corporate branch. Ms Mackay joined the OAIC in September 2019 and brings 19 years' experience within the Australian Public Service Senior Executive Service. Most recently, Ms Mackay held senior governance-related roles at the Civil Aviation Safety Authority. Prior to this Ms Mackay served as General Manager of Product Safety at the Australian Competition and Consumer Commission (ACCC). Other senior positions held include Registrar of Trade Marks and Designs, and General Manager, Customer Service at IP Australia.

Ms Mackay was awarded the Public Service Medal in 1996 for her work developing and implementing business and consumer education programs while at the ACT Consumer Affairs Bureau. She holds a

Bachelor of Arts and Diploma of Education from Macquarie University, a Graduate Diploma of Legal Studies from the University of Canberra and a Graduate Certificate in the Psychology of Risk from the Australian Catholic University.

## Assistant Commissioner, Dispute Resolution — Andrew Solomon

Andrew Solomon served as Assistant Commissioner, Dispute Resolution until November 2019, having spent more than a decade at the OAIC and former Office of the Privacy Commissioner. Previously, he was NSW State Manager for the National Native Title Tribunal, and ran the Central Sydney Community Transport Group, a not-for-profit organisation.

Mr Solomon holds a Bachelor of Laws from the University of New South Wales and a Graduate Diploma in Legal Practice. He was admitted to the Australian legal profession by the Supreme Court of NSW in 1994.

## Assistant Commissioner, Dispute Resolution — David Stevens

David Stevens leads the OAIC's Dispute Resolution branch. Mr Stevens joined the OAIC in February 2020 after more than 20 years working in prominent legal and investigations-related roles in Australia and overseas, as Assistant Commonwealth Director of Public Prosecutions, Head of Chambers of the International Criminal Court in The Hague, at the NSW Crown Solicitor's Office and most recently, the NSW Electoral Commission. He is an experienced change leader, an accredited mediator and has also worked as a law lecturer and training officer.

Mr Stevens holds a Bachelor of Laws, a Bachelor of Economics, a Master of Laws and a Graduate Diploma in Legal Practice. He was admitted as a legal practitioner in 1990.





**OAIC Executive.** Left to right, Assistant Commissioner, Dispute Resolution — David Stevens, Deputy Commissioner — Elizabeth Hampton, Assistant Commissioner, Corporate — Ruth Mackay PSM, Australian Information Commissioner and Privacy Commissioner Angelene Falk, Assistant Commissioner, Regulation and Strategy — Melanie Drayton  
Missing from photo — Assistant Commissioner, Dispute Resolution — Andrew Solomon (retired November 2019)





## Part 2

# Performance

Our annual performance statement .....	22
Strategic Priority 1 .....	27
Strategic Priority 2 .....	33
Strategic Priority 3 .....	62
Strategic Priority 4 .....	68

# Our annual performance statement

## Introduction

I, Angelene Falk, as the accountable authority of the Office of the Australian Information Commissioner (OAIC), present the 2019–20 annual performance statement of the OAIC, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, this annual performance statement is based on properly maintained records, accurately reflects the performance of the entity, and complies with subsection 39(2) of the PGPA Act.

## Overall performance

During this reporting period, we worked to achieve the 31 indicators outlined in the *OAIC Corporate Plan 2019–20*. We measure our success against our performance indicators which are grouped under our 4 strategic priorities.

We delivered on our purpose to promote and uphold privacy and information access rights.

In 2019–20, the OAIC achieved 16 of our 31 performance indicators and partially achieved 4 indicators. We did not achieve 8 indicators, and this result largely reflects increased volumes of work and our systematic efforts to reduce the backlog created by a sustained increase in privacy complaints and Information Commissioner (IC) review applications over recent years.

Three further indicators did not apply during this reporting period, as the commencement of the Consumer Data Right and reforms to the *Privacy Act 1988* (Privacy Act) were delayed.

Among the highlights of our performance in 2019–20:

- We assisted 3,366 complainants in resolving privacy issues, about 15% more than in 2018–19, with an average finalisation time of 4.7 months
- We handled 14,842 privacy enquiries and 2,297 FOI enquiries, down 15% and 20% respectively on 2018–19
- We finalised 26% more IC reviews than in 2018–19
- We cooperated with our co-regulator, the Australian Competition and Consumer Commission (ACCC), to implement the Consumer Data Right on 1 July 2020
- For the first time in the history of the OAIC, we commenced civil proceedings in the Federal Court. Proceedings are against Facebook Inc. and Facebook Ireland
- Following the outbreak of COVID-19, we convened a COVID Taskforce and provided a significant volume of policy advice, including in relation to the important privacy safeguards that were built into the Australian Government's COVIDSafe app
- We released a *Guide to health privacy* to help providers understand their obligations and embed good privacy practice
- We launched a new e-learning course to support good privacy practice in Australian Government agencies
- We attracted a record number of supporters for our Privacy Awareness Week campaign
- We led a campaign for Right to Know Day to raise awareness of access to information rights and responsibilities.

Results

Our performance is measured against the 31 indicators in the *OAIC Corporate Plan 2019–20*.

Table 2.1: Indicators by status

Indicator	Measure	Status
1.1 The OAIC has influenced the development of globally aligned privacy protections	(1) The OAIC is actively engaged in global privacy forums (2) Greater alignment between Australian protections and global best practice	Partially achieved
1.2 The OAIC has worked with stakeholders to develop online privacy protections	Active engagement with stakeholders	Achieved
1.3 Protections are enforced through regulatory conduct	Commissioner’s determinations, directions and enforceable undertakings are complied with; civil penalties are awarded; assessment recommendations are accepted.	Not applicable
1.4 Community is aware of the risks of engaging online	Privacy awareness is tracked through longitudinal survey	Achieved
1.5 Individuals take action to protect their online privacy	Online privacy behaviour is tracked through longitudinal survey	Partially achieved

Notes

Indicator 1.1 was ‘Partially achieved’ because the legislation to support the code of practice for digital platforms was delayed and this meant alignment with global best practice was not achieved.

Indicator 1.3 was ‘Not applicable’ because the legislation to support the code of practice for digital platforms was delayed.



**Table 2.1:** Indicators by status

Indicator	Measure	Status
2.1 Policy and legislative reform proposals are identified	The OAIC has identified and advanced proposals	Achieved
2.2 Handling privacy complaints	Time taken to finalise privacy complaints*	Achieved
2.3 Conducting Privacy Commissioner-initiated investigations (CIIs)	Time taken to finalise privacy CIIs*	Not achieved
2.4 Handling data breach notifications	(1) Time taken to finalise data breach notifications (DBNs)* (2) Time taken to finalise My Health Record DBNs*	Not achieved
2.5 Providing an Information Commissioner (IC) review function	Time taken to complete IC reviews*	Not achieved
2.6 Handling FOI complaints	Time taken to finalise FOI complaints*	Not achieved
2.7 Conducting Commissioner-initiated investigations (FOI)	Time taken to finalise CIIs (FOI)*	Not achieved
2.8 Targeted monitoring, guidance and advice provided	Submissions, guidance, advice and monitoring provided that effect change to protect privacy and access to information rights	Achieved
2.9 Provide a public information service	Time taken to finalise written enquiries*	Not achieved
2.10 Increase in community awareness and understanding of privacy and information access rights	(1) Visits to OAIC website (2) Social media engagement	Achieved
2.11 Open Banking is implemented with strong privacy protections	(1) Project milestones met (2) Ongoing advice is provided and integrated into the scheme	Achieved
2.12 The OAIC promotes awareness of Consumer Data Right privacy rights	Education and awareness materials are developed and promoted	Achieved
2.13 Community uses the Consumer Data Right complaints mechanism to protect their privacy rights	Complaint handling mechanism for the Consumer Data Right is operational and actively used	Not applicable

**Note**

Indicator 2.13 was 'Not applicable' because the introduction of the Consumer Data Right was delayed from 1 February to 1 July 2020.

\* Target in OAIC Portfolio Budget Statement 2019–20.

**Table 2.1:** Indicators by status

Indicator	Measure	Status
3.1 Improvement in FOI review trends and FOI complaints trends	Number of FOI requests to government agencies and FOI complaints	Not achieved
3.2 Improvement in time taken to respond to FOI requests	FOI requests determined and processed within the applicable statutory time period	Not achieved
3.3 More government-held information is published proactively	Information available on agency websites	Partially achieved
3.4 Increase in community awareness and understanding of information access rights	(1) Visits to OAIC website	Achieved
	(2) Social media engagement	

**Table 2.1:** Indicators by status

Indicator	Measure	Status
4.1 The OAIC has sufficient statutory powers to detect and deter non-compliance	Powers are enhanced	Not applicable
4.2 The OAIC is seen to take appropriate regulatory action in relation to breaches of the relevant law	Media and stakeholder sentiment	Achieved
4.3 International regulators actively seek the views of the OAIC in relation to policy development or enforcement activities	Engagement with international regulators	Achieved
4.4 The OAIC has strong and productive relationships with domestic regulators	Regular engagement with other regulators	Achieved
4.5 Improved employee engagement	Measured through APS Employee Census	Achieved
4.6 Reduced staff turnover rate	Staff turnover rate	Partially achieved
4.7 Strong competition for vacancies	Sufficient high-quality applicants for advertised roles	Achieved
4.8 Internal capability supports the full range of OAIC functions	Approved training courses completed	Achieved
4.9 Data analysis identifies enterprise risks	Reports completed	Achieved

**Note**

Indicator 4.1 was 'Not applicable' because legislation amending the Privacy Act was not enacted during the reporting period.



## Strategic Priority 1

### Advance online privacy protections for Australians

The OAIC works to advance online privacy protections for Australians which support the Australian economy. We do this by influencing the development of legislation, applying a contemporary approach to regulation (including through collaboration) and raising awareness of online privacy protection frameworks.

#### Key focus area: Influence development of legislation

The OAIC has worked with international and domestic regulators, government, businesses and the community to help ensure that privacy policy and legislation is globally aligned. We seek to increase online privacy protection and support the Australian economy.

#### Indicator 1.1: The OAIC has influenced the development of globally aligned privacy protection



##### Measure

(1) The OAIC is actively engaged in privacy forums.



##### Target: Qualitatively demonstrated

Achieved.

The OAIC recognises that global and regional forums present a unique opportunity for Australia to be a leader in the privacy community and influence the global debate on privacy issues.

These forums allow us to collaborate when developing policy, guidance and education campaigns; influence the development of global policy and standards; and cooperate on investigations and enforcement. Through these forums we work towards the interoperability of Australia's privacy framework with other data protection frameworks around the world, exchange information to make the best use of our resources and help ensure consistency in the system of regulatory oversight.

The OAIC is a member of the Global Privacy Assembly, which provides international leadership by coordinating the efforts of over 130 privacy and data protection authorities from across the globe. The Global Privacy Assembly is governed by the Executive Committee and receives strategy advice from the Executive Committee's Strategic Direction Sub-Committee. Commissioner Angelene Falk is a member of the Executive Committee and is Chair of the Strategic Direction Sub-Committee.

We are also a founding member of the Asia Pacific Privacy Authorities Forum, which provides leadership and support for the privacy regulator community in the Asia Pacific region.

At national level, we are a member of the Privacy Authorities Australia network, which advances best practice privacy policy, and we convened the COVID-19 National Privacy Team to respond to personal information handling proposals with national implications. For more information see Domestic networks on page 72.



### Measure

(2) Greater alignment between Australian protections and global best practice.



### Target: Qualitatively demonstrated

Partially achieved.

The Attorney-General's Department is developing legislation to amend the Privacy Act, including powers for the development of a code of practice for social media and online platforms that trade in personal information. The code will require these entities to be transparent about data sharing and obtain specific consent from users for the collection, use and disclosure of personal information.

Although the legislation has been delayed as a result of the COVID-19 pandemic, the OAIC has been undertaking preparatory work to support the development of the code including commissioning research to inform our policy positions on the requirements of the code.

## International privacy networks

### Global Privacy Assembly

The Global Privacy Assembly (GPA) first met in 1979 as the International Conference of Data Protection and Privacy Commissioners. The GPA is the premier global forum of Data Protection and Privacy Commissioners, with over 120 members from all regions of the world. The GPA seeks to build an environment in which privacy and data protection authorities around the world are able effectively to act to fulfil their mandates, both individually and

in concert, through diffusion of knowledge and supportive connections.

The OAIC seeks to influence consistency and cooperation in the global regulation of privacy to ensure that Australians' personal information is protected wherever it flows. The OAIC provides leadership to the global privacy community through its role on the Executive Committee of the GPA. The Commissioner also chairs the Strategic Direction Sub-Committee, which is responsible for advising the Executive Committee on the strategic direction and focus of the GPA.

The GPA has a number of working groups which are tasked with delivering outcomes in relation to the most significant initiatives identified by the GPA's membership. The OAIC co-chairs a working group which considers the regulatory intersection between privacy, consumer protection and competition. The OAIC recognises that this collaboration between data protection authorities and consumer protection authorities is an essential part of protecting consumers in the digital economy. The OAIC is also an active member of the International Enforcement Working Group and was one of the original signatories to the Global Cross Border Enforcement Cooperation Arrangement.

In October 2019, the OAIC submitted 2 resolutions which were unanimously adopted at the 41st meeting of the GPA in Albania:

- resolution to support and facilitate regulatory cooperation between data protection authorities and consumer protection and competition authorities to achieve clear and consistently high standards of data protection in the digital economy
- resolution to address the role of human error in personal data breaches.

### Asia Pacific Privacy Authorities forum

The Asia Pacific Privacy Authorities (APPA) forum is the principal forum for privacy authorities in the Asia Pacific region to form partnerships and exchange ideas about privacy regulation, new technologies and the management of privacy enquiries and complaints.

The OAIC is an active participant in APPA events and activities. Over the last 12 months, we have attended both APPA forums and engaged in discussions on jurisdictional updates. In December 2019, the OAIC attended the APPA forum hosted by the National Privacy Commission of the Philippines. In June 2020, we participated in the meeting hosted virtually by the Personal Data Protection Commission of Singapore, and we presented on Australia's current privacy law reform, the Australian COVID-19 response and activities of the GPA.

### Global Privacy Enforcement Network

The Global Privacy Enforcement Network (GPEN) is designed to facilitate cross-border cooperation in the enforcement of privacy laws. GPEN builds on the Organisation for Economic Co-operation and Development's (OECD) Recommendation on Cross-border Cooperation in the Enforcement of Laws Protecting Privacy which recognises the need for greater cooperation between privacy enforcement authorities on cross-border privacy matters.

The OAIC attends regular teleconferences to discuss topical issues and engages in the GPEN alert system.

## Indicator 1.2: The OAIC has worked with stakeholders to develop online privacy protections



### Measure

Active engagement with stakeholders.



### Target: Qualitatively demonstrated

Achieved.

The Attorney-General's Department is developing legislation to amend the Privacy Act to introduce a new penalty regime and enforcement powers, and powers for the development of a code of practice for social media and online platforms that trade in personal information. The code will require these companies to be more transparent about any data sharing and obtain more specific consent of users when they collect, use and disclose personal information.

This legislation has been delayed as a result of the Attorney-General's Department's work in relation to the COVID-19 pandemic. However, the OAIC has undertaken preparatory work to assist in collaborating with stakeholders to develop the code. We have established a dedicated project team to manage this work. We have also liaised with the Attorney-General's Department throughout the development of the draft legislation.

The OAIC also met online industry stakeholders to discuss the proposed code of practice for social media and online platforms that trade in personal information.

## Key focus area: Develop a code of practice for digital platforms

The OAIC continues to work to develop a binding code of practice for digital platforms that provides stronger privacy protections for Australians in the online environment, and for groups with particular needs such as children.

### Indicator 1.3: Protections are enforced through regulatory conduct



#### Measure

Commissioner's determinations, directions and enforceable undertakings are complied with; civil penalties are awarded; assessment recommendations are accepted.



#### Target: 90% compliance

Not applicable.

Amendments to the Privacy Act and the development of a code of practice for social media and online platforms that trade in personal information have been delayed as a result of the COVID-19 pandemic. As such, no enforcement action has been taken.

However, as it currently stands, the Privacy Act confers a range of regulatory powers on the Commissioner. This includes powers to investigate possible interferences with privacy and to conduct assessments of whether entities handle personal information in accordance with the Australian Privacy Principles (APPs). The Commissioner's enforcement powers include powers to accept an enforceable undertaking, to make a determination and to apply to the Federal Court for a civil penalty order alleging a serious and/or repeated interference with privacy.

Under the existing legislation, the OAIC has commenced an investigation into the online conduct of Clearview AI Inc. (Clearview). In 2019–20,

the Commissioner opened an investigation into the personal information handling practices of Clearview focusing on the company's use of 'scraped' data and biometrics of individuals.

Further, in March 2020 the Commissioner commenced proceedings against Facebook Inc. and Facebook Ireland in the Federal Court. The Commissioner alleges the social media platform has committed serious and/or repeated interferences with privacy in contravention of the Privacy Act. The proceedings are continuing in 2020–21.

## Key focus area: Identify and take appropriate regulatory actions

The OAIC is tasked with regulating the protection of personal information in the online environment and making regulated entities aware of their obligations. This includes auditing compliance, engaging with regulated entities about the development of new online products, and taking appropriate regulatory action to address deficiencies. We have worked to raise public awareness of the privacy risks of engaging in the online environment.

### Indicator 1.4: Community is aware of the risks of engaging online



#### Measure

Privacy awareness is tracked through longitudinal survey.



#### Target: Community awareness of privacy risks increases compared to previous surveys

Achieved.

The OAIC undertook the Australian Community Attitudes to Privacy Survey (ACAPS) from February to March 2020, which asked respondents what they think are the biggest privacy risks facing Australians today. Identity theft and fraud was perceived to

be the biggest privacy risk (76%), followed by data security and data breaches (61%), social media sites (58%) and smartphone apps (49%).

The same question was asked in 2017 on an unprompted basis, which limits comparisons between the data. However, 27% of respondents named online services and social media sites as the biggest privacy risks in 2017. Identity theft and fraud was nominated by 19% of 2017 respondents, data security and data breaches by 17%, while only 3% said smartphone apps were the biggest privacy risk.

### Facebook proceedings

Public awareness of the risks of engaging online was raised when the Commissioner lodged proceedings against Facebook Inc. and Facebook Ireland in the Federal Court of Australia on 9 March 2020. The OAIC published a media release on our website about the commencement of proceedings and a further statement on 22 April 2020. For more information see Case Study: CII – Facebook Inc. and Facebook Ireland on page 41.

### Privacy Awareness Week 2020

Privacy Awareness Week (PAW) is an annual initiative of the OAIC that highlights the importance of protecting personal information and promotes good privacy practice. The event is held in partnership with state and territory regulators and the Asia Pacific Privacy Authorities (APPA) forum.

The OAIC's PAW campaign for 2020 — 'Reboot your privacy' — ran from 4 to 10 May 2020 and focused on raising awareness of online privacy risks and how to combat them. The campaign website launched in early April and featured interactive tips to enhance understanding of data practices in the digital environment and how to protect personal information.

Rather than postpone the PAW campaign in light of the COVID-19 pandemic, the OAIC delivered PAW 2020 in an entirely digital format. The Commissioner participated in several virtual events including:

- OneTrust webinar: Privacy in a pandemic
- Queensland PAW presentation hosted on the Office of the Queensland Information Commissioner website
- OAIC Q&A video hosted on the PAW 2020 website.

A record number of organisations signed up as official PAW supporters in 2019–20 (549, up from 500 in 2018–19 and 360 in 2017–18). Supporters were given access to a wide range of resources to promote the importance of good privacy practice to their staff, customers and other stakeholders, including posters, social media tiles and banners, presentation slides and digital assets.

*"The collection and handling of personal information is ... critical to containing COVID-19. It is part of addressing this health crisis and ensuring that we emerge from the pandemic with our rights protected."*

*Privacy laws both enable agile, innovative responses to protect the public interest and protect our fundamental rights. This has never been more evident."*

Angelene Falk, Australian Information Commissioner and Privacy Commissioner, presentation to launch Privacy Awareness Week 2020 in Queensland. Recorded on 28 April 2020.

## Indicator 1.5: Individuals take action to protect their online privacy



### Measure

Online privacy behaviour is tracked through longitudinal survey.



### Target: Community is more likely to adjust privacy settings

Partially achieved.

ACAPS found that while respondents are less likely to adjust privacy settings on a social networking site compared to 2017, they are taking a range of other actions to protect their privacy online.

In 2020, 46% of people said they always or often adjust privacy settings on a social networking website, compared to 55% in 2017.

The proportion of respondents who always or often took the following steps to protect their personal information online also declined from 2017 to 2020:

- checking websites were secure before sharing personal information (2020: 56%; 2017: 62%)
- clearing their browsing and search history (2020: 51%; 2017: 55%)
- choosing not to use an app on a mobile device (2020: 38%; 2017: 50%).

However, the survey also found that 7 in 10 Australians have either deleted an app and/or denied an app permission to access information due to concerns about their data privacy.

Three-quarters (75%) of those surveyed said they care enough about protection of their personal information to 'actually do something about it' and only 30% believe it is too much effort to protect the privacy of their data.

The number of people who always or often refuse to provide personal information increased from 28% in 2017 to 34% in 2020. Almost 1 in 3 (32%) always or

often use an ad blocker, VPN, privacy-focused web search engine or incognito mode when browsing, while 29% always or often choose an app or software because it has better privacy practices.

Almost a quarter (23%) have asked for their personal information to be deleted, 13% have changed provider, and 4% have given up on using a service out of concern for their data privacy.

## Australian Community Attitudes to Privacy Survey 2020

The OAIC undertook the Australian Community Attitudes to Privacy Survey (ACAPS) between February and March 2020. ACAPS is a longitudinal study of community understanding, attitudes to and behaviours relating to privacy.

The survey was conducted for the OAIC by Lonergan Research using a nationally representative sample of 2,866 unique respondents aged 18 years and over. For the first time since the survey's inception in 2001, all data for the survey was collected online. Additional research was conducted in early April 2020 to measure changing attitudes to privacy issues following the COVID-19 outbreak.

The main objectives of the 2020 survey were to:

- provide insight into Australian attitudes towards privacy
- understand the change in Australian attitudes and behaviours over time through the construction of longitudinal trend models
- identify awareness of and concern about emerging privacy issues, related to new technologies and regulation
- collect data to assist the OAIC as the national privacy regulator across policy, compliance and communications initiatives.

The insights from this research provide important signposts for policy makers, businesses and community organisations and also inform our work in policy, regulation and consumer education.



## Strategic Priority 2

### Influence and uphold privacy and information access rights frameworks

The OAIC regulates the collection and management of personal information by organisations and agencies to ensure it is handled responsibly. We promote access to government-held information through the regulation of the *Freedom of Information Act 1982* and in the provision of information policy advice. The OAIC promotes and upholds these rights and regulatory frameworks through its core functions. This includes influencing global and domestic legislative and regulatory developments to advance the national interest.

#### Key focus area: Influence policy and legislative change to ensure frameworks remain appropriate

The OAIC provides advice to government proposing policy and legislative change that responds to the changing environment in order to maintain or enhance information access and privacy rights. The OAIC also influences global regulatory developments to advance Australia's national interest in strong global frameworks.

#### Indicator 2.1: Policy and legislative reform proposals are identified



##### Measure

The OAIC has identified and advanced proposals.



##### Target: Qualitatively demonstrated

Achieved.

The OAIC has provided timely and informed advice to government regarding the privacy and access to information impacts of proposals for legislative reform. The OAIC has provided bill scrutiny comments across a broad range of subject areas including education and training, health, social security, the environment, migration, national security, telecommunications, competition and consumer law, and aged care.

The OAIC has provided advice in relation to the COVID-19 pandemic, developments in national security, law enforcement, telecommunications, data-matching and the development and deployment of new technologies across various industry sectors.

Specifically, in relation to the COVID-19 pandemic, the OAIC has engaged closely with key stakeholders such as the Department of Health and provided advice in relation to:

- the expansion of telehealth services and the related Privacy Impact Assessment
- the development and deployment of the COVIDSafe app and the related Privacy Impact Assessment
- amendments to the Privacy Act enshrining strict privacy safeguards for COVIDSafe app data.

The OAIC made several recommendations in relation to the COVIDSafe app, including that legislative safeguards would provide the strongest form of privacy protection and engender the greatest trust and confidence in the public's use of the app. This recommendation was accepted and implemented, and important privacy protections were enshrined in the Privacy Act in relation to COVIDSafe app data. These strong privacy measures were designed to give Australians confidence in the protection of their personal information within the COVIDSafe system.

The OAIC has undertaken research into global responses to the COVID-19 pandemic, including the development of various contact tracing apps and other technological developments which have relied on personal information to respond to and manage the global health crisis. The OAIC's research has informed our advice to stakeholders, including our regulatory counterparts around the world.

## Key focus area: Identify and take appropriate regulatory action

The OAIC regulates the handling of personal information by organisations and agencies. We also regulate access to government-held information under the FOI Act and review decisions made by agencies and ministers.

We provide complaint, review, investigation, notifiable data breach, assessment and public information services. We monitor and provide guidance and advice to mitigate impacts on privacy and access to government-held information.

### Australian Privacy Principles

Australian Government agencies and private sector organisations covered by the Privacy Act must comply with the law when collecting, using and storing an individual's personal information. 'Personal information' is any information that is about an individual. The most obvious example is an individual's name. Other examples include their address, their date of birth, a photo of their face or a record of their opinion and views. Any information or an opinion that is about an identified individual, or a reasonably identifiable individual, is personal information.

The Privacy Act includes 13 Australian Privacy Principles (APPs), which set out the requirements for business and government agencies managing personal information.

- APP 1 — Open and Transparent Management of Personal Information
- APP 2 — Anonymity and Pseudonymity
- APP 3 — Collection of Solicited Personal Information
- APP 4 — Dealing with Unsolicited Personal Information
- APP 5 — Notification of the Collection of Personal Information
- APP 6 — Use or Disclosure of Personal Information
- APP 7 — Direct Marketing
- APP 8 — Cross-Border Disclosure of Personal Information
- APP 9 — Adoption, Use or Disclosure of Government Related Identifiers
- APP 10 — Quality of Personal Information
- APP 11 — Security of Personal Information
- APP 12 — Access to Personal Information
- APP 13 — Correction of Personal Information



## Indicator 2.2: Handling privacy complaints



### Measure

Time taken to finalise privacy complaints.



### Target: 80% of privacy complaints are finalised within 12 months

Achieved.

Under s 36 of the Privacy Act complaints may be made to the Commissioner by individuals about an act or practice that may be an interference with their privacy. An interference with privacy may relate to credit reporting provisions of the Privacy Act or to the APPs.

The APPs deal with the management, collection, use and disclosure, quality and security, access and correction of personal information held by an agency or organisation covered by the Privacy Act.

In 2019–20 the complaint handling team:

- received 2,673 privacy complaints, which is a 19% decrease in the number of privacy complaints received in 2018–19. This is a reversal of the trend over the preceding 3 years, however the significant drop in privacy complaints recorded in the second half of the reporting period is likely to be due to the COVID-19 pandemic and may not continue
- closed 3,366 privacy complaints, which is 15% more than in 2018–19 and 22% more than 2017–18
- finalised 87% of all privacy complaints within 12 months of receipt. The average time taken to close a privacy complaint was 4.7 months.

## Privacy complaints by issue

The majority of privacy complaints we received were about the handling of personal information under the APPs. The most common issues raised in these complaints were:

- use or disclosure of personal information (APP 6)
- security of personal information (APP 11)
- access to personal information (APP 12)
- collection of solicited personal information (APP 3)
- quality of personal information (APP 10).

During this reporting period, 11% of the privacy complaints we received were about credit reporting – a slight increase from the last financial year (2018–19: 10%) but lower than the previous two financial years (2017–18: 14%; 2016–17: 16%). The decrease reflected the continuing role of external dispute resolution schemes in resolving complaints about credit reporting matters.

## Sectors

Privacy complaints can arise in a broad range of sectors. The top 10 sectors complained about have changed from previous years. The Australian Government has overtaken finance as the most complained about sector. The retail sector has overtaken the telecommunications sector and real estate agents have risen 2 places from ninth to seventh. Insurance also moved into the top 10 sectors in 2019–20.

**Table 2.2.1:** Top 10 sectors by privacy complaints received

Sector	2019–20
Australian Government	319
Finance (including superannuation)	305
Health service providers	300
Retail	159
Telecommunications	149
Online services	132
Real estate agents	126
Credit reporting bodies	108
Insurance	108
Personal services (includes employment, childcare and vets)	94

## Resolving complaints

The OAIC's early resolution, conciliations and investigation and determinations areas deal mostly with APP and credit reporting complaints. Our complaint handling team also finalises complaints about spent convictions, My Health Records, tax file numbers, Australian Capital Territory Privacy Principles, data-matching, healthcare identifiers and student identifiers.

Complaints are initially assessed against the OAIC's jurisdiction and informal resolution is attempted. In 2019–20 this early resolution approach resolved 77% of all complaints closed during the year.

Under s 40A of the Privacy Act, the Commissioner must attempt conciliation where it is reasonably possible that the complaint may be conciliated successfully. See Case Studies on page 37.

Where matters are not resolved through early resolution, we attempt resolution by mediated

agreement between the parties. In 2019–20 we conciliated over 175 complaints with 59% successfully resolved.

Matters not resolved in conciliation or which are considered not able to be conciliated are referred for investigation into compliance with the Privacy Act, under s 40. See Case Studies on page 38.

The Commissioner may also decline to investigate matters further under s 41 of the Privacy Act where, for example, no interference with privacy is found, investigation is not warranted in the circumstances, or the complaint is being adequately dealt with by the respondent.

Under s 52 of the Privacy Act, after investigating a complaint, the Commissioner may make a determination finding the complaint is substantiated and a declaration concerning remedial actions, such as compensation. In 2019–20, the Commissioner made 4 determinations.



## Case Studies: Privacy complaints – resolved in conciliation

### Case Study 2.2.1: Release of information by healthcare provider – resolved in conciliation

The complainant had learned that the respondent, a healthcare provider, had inadvertently sent forms containing their sensitive health information to an incorrect recipient, due to human error.

The OAIC conducted a conciliation between the parties, who agreed to resolve the complaint. This was on the basis of a payment of \$10,000, and the respondent implementing further staff training to ensure this did not occur again.

### Case Study 2.2.2: Collection of sensitive information by research agency – resolved in conciliation

The complainant became aware that the respondent, a research organisation, had collected sensitive information about his family without their consent.

Following preliminary inquiries, the OAIC conducted a conciliation which led to the resolution of the complaints by agreement between the parties. To resolve the complaints the respondent agreed to delete the sensitive information and to raise the issues identified with its ethics committee. It also agreed to review its practices, identify training needs and adopt recommendations from an external legal audit of its privacy processes.

### Case Study 2.2.3: Disclosure of personal information by employer – resolved in conciliation

A dispute between parties to an employment relationship was resolved by conciliation. The complainant had learned that her employer had disclosed information about her to another organisation.

During conciliation both parties negotiated to resolve the complaint by an agreed separation of employment, on the terms that the complainant received from the respondent a written apology, payment of \$20,000 (plus all statutory entitlements) and a written statement of service.

## External dispute resolution schemes

The Information Commissioner can recognise an external dispute resolution scheme (EDRS) to handle particular privacy-related complaints (s 35A of the Privacy Act). The EDRSs we recognise are:

- Australian Financial Complaints Authority
- Energy & Water Ombudsman NSW
- Energy & Water Ombudsman SA
- Energy and Water Ombudsman (Victoria)
- Energy & Water Ombudsman Queensland

- Energy and Water Ombudsman Western Australia
- Public Transport Ombudsman (Victoria)
- Telecommunications Industry Ombudsman
- Tolling Customer Ombudsman.

During 2019–20 the OAIC collaborated with EDRSs for privacy complaint management and transferred relevant complaints. The decrease in the number of complaints received by the OAIC about credit reporting matters reflects the role played by EDRSs. Our collaboration with these schemes is expected to result in a greater number of privacy complaints being transferred in 2020–21.



## Case Studies: Privacy complaints – finalised by investigation

### Case Study 2.2.4: Privacy complaint about gym – finalised by investigation

The complainant attended a gym for a single trial session. The complainant had become aware that their personal information had been disclosed to other branches of the gym franchise without the complainant's knowledge or consent.

We conducted preliminary inquiries into the matter. The respondent apologised to the complainant, deleted the complainant's personal information and deactivated the account.

### Case Study 2.2.5: Privacy complaint about health service provider – finalised by investigation

The complainant was a patient at one health service provider. The complainant became aware that her personal information was provided without her knowledge or consent to a related health service provider (the respondent) when she received a letter marketing their services.

We conducted preliminary inquiries into the matter. The respondent returned the personal information to the first health service provider, apologised to the complainant, and implemented procedures to verify consent for collection of personal information in the future.

### Case Study 2.2.6: Privacy complaint about lawyer – finalised by investigation

The complainant became aware that their personal information had been inappropriately disclosed by a bank to a lawyer representing an opposing party in civil proceedings.

We investigated and conciliated the matter. The respondent apologised and made a \$10,000 payment to the complainant.

### Case Study 2.2.7: Privacy complaint about breach of APP 3 – finalised by investigation

The complainant became aware that their personal information was collected by the respondent in contravention of APP 3.

We made preliminary inquiries regarding the complaint. In response, the respondent deleted the complainant's personal information on request, provided feedback and training to relevant staff members, and amended internal policies and procedures to ensure ongoing compliance with the Privacy Act.

## Backlog project

Growth in privacy complaints over recent years led to a backlog of complaints carried through to 2019–20. At the start of the reporting period, the OAIC received additional funding to address that backlog. We reviewed our processes and employed additional staff in relevant teams. We also appointed additional conciliators.

We ensured the quality of our privacy complaint processes by:

- handling privacy complaints in line with our Privacy Regulatory Action Policy and Privacy Regulatory Action Guide
- undertaking regular staff training, including conciliations and investigation training, and administrative law training
- enabling staff to participate in complaint handling networks and events, including the Commonwealth Ombudsman's Complaint Handling Forum and Privacy Awareness Week activities
- reviewing evidence-gathering powers for making determinations by utilising the Commissioner's powers to obtain information under s 44 of the Privacy Act.

The backlog for incoming complaints was cleared by 31 January 2020 and the investigations backlog was cleared by the end of May 2020.

In February 2020, to further increase efficiency, we reviewed our conciliation processes and appointed external accredited mediators. Matters were sent directly from early resolution to conciliation. More formal (telephone) conciliations were conducted in 2019–20 than in previous years, leading to a higher number of privacy complaints being resolved more quickly and on terms acceptable to the parties involved.

## Determinations

The Commissioner made 4 determinations during 2019–20, finding interferences with individuals' privacy. Two determinations related to historical cases of non-compliance with the National Privacy Principles and Information Privacy Principles, which applied prior to March 2014. The other 2 determinations related to cases involving breaches of the APPs.

In addition to providing outcomes for the particular complainants, the 2 more recent determinations provide insight into how APP 6, APP 11 and APP 12 apply to particular factual circumstances, as well as deterring APP entities from breaching the Privacy Act.

The Commissioner used a number of her declaration powers under s 52, including awarding compensation, requiring respondents to apologise to complainants for their wrongdoing and obliging respondents to perform certain acts of redress.



## Case Studies: Privacy complaints – finalised by determination

### Case Study 2.2.8: Privacy complaint about disclosure of medical information

A medical practice disclosed sensitive medical information to the wrong email address in circumstances where the complainant suffered significant psychological and emotional harm. The respondent was found to have breached APP 6 as it disclosed personal information for a purpose secondary to the purpose for which it was collected, without the complainant's consent. The respondent was also found to have breached APP 11, as it failed to take reasonable steps to protect the personal information that it holds from unauthorised disclosure.

The Commissioner awarded compensation of \$10,000 and \$3,000 to each complainant for pain and suffering and awarded compensation of \$3,400 to reimburse one complainant for costs associated with psychological treatment.

### Case Study 2.2.9: Privacy complaint about breach of National Privacy Principle 1.3

A company that provided information services through the maintenance of a public record database collected the personal information of the complainant in breach of the National Privacy Principles, by failing to take any reasonable steps to advise the complainant of relevant matters, including the purposes for which the information was collected and the organisations to which it was usually disclosed.

The Commissioner awarded compensation of \$1,500 for pain and suffering. The Commissioner also declared that the respondent was required to apologise to the complainant and publish a notice outlining the matters required by National Privacy Principle 1.3, including requiring it to publish a link to its privacy policy.

### Indicator 2.3: Conducting Privacy Commissioner-initiated investigations (CIIs)

Subsection 40(2) of the Privacy Act allows the Commissioner to investigate, on the Commissioner's own initiative, an act or practice that may be an interference with privacy. This power is used to investigate possible interferences with privacy that are of concern but are not in direct response to an individual privacy complaint.

During this reporting period, preliminary inquiries and/or an investigation was opened in 19 CII matters.

We closed 21 CIIs during the reporting period, including 10 matters that were opened in 2019–20. This included closing a CII into the acts and practices of Facebook Inc. and Facebook Ireland, in relation to allegations that the personal information of Australian Facebook users had been improperly collected by third-party applications, and lodging Federal Court civil penalty proceedings (see Case Study 2.3.1 on page 41). At 30 June 2020, there were 19 ongoing matters, with 9 from 2019–20 ongoing. In addition, 10 matters were ongoing from previous years including 2 from 2018–19.



#### Measure

Time taken to finalise privacy CIIs.



#### Target: 80% of privacy CIIs are finalised within 8 months

Not achieved.

The OAIC's average time to finalise privacy CIIs during 2019–20 was 9.9 months, reflecting an increase in the volume of privacy CIIs commenced and finalised during 2019–20 and our efforts to progress our backlog of older investigations.

During the reporting period, the OAIC commenced 27% more privacy CIIs and finalised 200% more privacy CIIs than the previous financial year. We finalised 38% of CIIs within 8 months.

### Commissioner-initiated investigations

A Commissioner-initiated investigation (CII) is conducted in response to the identification of a significant risk.

The primary objective in undertaking a CII is to improve the privacy practices of investigated entities and the regulated community generally. CIIs address systemic issues in personal information handling to instil public confidence in the protection of personal information.

Where an individual has suffered compensable loss or damage, they may make a complaint under s 36 of the Privacy Act (see Indicator 2.2 on page 35).

**Table 2.3.1:** Privacy CIIs opened and closed

Year	Number of CIIs opened	Number of CIIs closed
2017–18	21	18
2018–19	15	7
2019–20	19	21



## Case Study: CII – Facebook Inc. and Facebook Ireland

### Case Study 2.3.1: Disclosure of personal information to the ‘This Is Your Digital Life’ app

In March 2020, the Commissioner lodged proceedings against US-based Facebook Inc. and Facebook Ireland in the Federal Court of Australia, alleging the social media platform had committed serious and/or repeated interferences with privacy under s 13G of the Privacy Act, and applying for a civil penalty.

The Commissioner alleges that in the period 12 March 2014 to 1 May 2015, Facebook Inc. and Facebook Ireland disclosed the personal information of Australian Facebook users to a third-party app, the ‘This Is Your Digital Life’ (TIYDL) app, in breach of APP 6. The Commissioner also alleges that both Facebook entities did not take reasonable steps during this period to protect their users’ personal information from unauthorised disclosure, in breach of APP 11.

The proceedings follow a CII commenced in April 2018 after media reports that the developer of the TIYDL app had sold Facebook user data to Cambridge Analytica, a data analytics firm, for political campaigning purposes. These reports generated significant, sustained public interest.

Shortly after these reports, Facebook publicly confirmed that the Facebook information of up to 87 million people, including up to 311,127 Australians, may have been improperly shared. This figure included individuals who had directly installed the TIYDL app, and individuals whose data may have been shared by their Facebook friends.

The Commissioner concluded the CII following the commencement of Federal Court proceedings, as she was satisfied that further investigation of the acts or practices that were the subject of those proceedings was not warranted in the circumstances.

This is the first time that the Commissioner has commenced proceedings alleging serious and/or repeated interferences with privacy and seeking a civil penalty for breach of those provisions. The Federal Court can impose a civil penalty of up to \$1.7M for each serious and/or repeated interference with privacy (as per the penalty rate applicable in 2014–15).

The proceedings are ongoing.

## Indicator 2.4: Handling privacy data breach notifications



### Measure

(1) Time taken to finalise data breach notifications (DBNs).



**Target: 80% of DBNs are finalised within 60 days**

Not achieved.

We:

- finalised 62% of notifications received under the Notifiable Data Breaches (NDB) scheme within 60 days
- finalised notifications received under the NDB scheme in an average of 77 days.



### Measure

(2) Time taken to finalise My Health Record DBNs.



**Target: 80% of My Health Record DBNs are finalised within 60 days**

Not achieved.

We finalised 57% of My Health Record DBNs within 60 days.



## Notifiable Data Breaches scheme

The Notifiable Data Breaches (NDB) scheme commenced on 22 February 2018. Under the scheme, Australian Government agencies and private sector organisations with obligations under the Privacy Act must notify individuals who are likely to be at risk of serious harm as a result of a data breach. They must also notify the OAIC.

Our responsibilities under the NDB scheme include:

- receiving notifications of eligible data breaches
- encouraging compliance with the NDB scheme, including handling complaints and taking regulatory action in response to instances of non-compliance
- offering advice and guidance to regulated entities and informing the community about how the NDB scheme operates
- responding to instances of non-compliance with the requirements of the NDB scheme.

The OAIC reviews every notice received under the NDB scheme to ensure the notifying entity has met its obligations under the scheme. This includes considering whether the notifying entity has:

- taken steps to contain the breach
- assessed whether the breach is likely to result in serious harm to individuals whose personal information was exposed
- taken steps to mitigate the risk of serious harm resulting from the breach
- provided appropriate notification to the OAIC and to affected individuals on the details of the breach and the steps that individuals can take to mitigate the risk of serious harm arising from the breach.

The Commissioner's powers under the NDB scheme include the discretion to direct an entity to notify individuals of eligible data breaches or declare that notification does not need to occur or can be delayed.

In 2019–20, the NDB scheme saw an 11% increase in the number of data breach notifications, compared to 2018–19.

The OAIC published the *Notifiable Data Breaches Report: July–December 2019* in February 2020 and the *Notifiable Data Breaches Report: January–June 2020* in July 2020. These reports provide government and industry with insights into trends in data breaches and assist in improving awareness and understanding of data breach risks and steps that entities can take to prevent them occurring.

The OAIC's data breach reports also highlight emerging issues and areas for ongoing attention by entities entrusted with protecting personal information.

## Voluntary data breaches

Prior to the introduction of the NDB scheme, the OAIC administered a voluntary data breach notification scheme. This scheme allowed organisations and agencies to self-report possible data breaches to us. We have continued to register voluntary data breach notifications for incidents that do not fall within the scope of the NDB scheme. These included incidents that did not meet the threshold of the NDB scheme, and data breaches that did not involve entities regulated by the NDB scheme.

In 2019–20, there was a 33% decrease in voluntary data breaches reported to the OAIC in comparison to 2018–19.

In a number of voluntary notifications received by the OAIC during this period, the notifying entity advised they were aware that the data breach fell below the threshold of the NDB scheme but notified the OAIC in the interests of full transparency.

The OAIC also administers a mandatory notification scheme for digital health data breaches. For more information see the *Annual Report of the Australian Information Commissioner's Activities in Relation to Digital Health 2019–20*.



**Table 2.4.1:** NDB, voluntary and mandatory My Health Record notifications received

Year	2017–18	2018–19	2019–20
Notifiable data breaches	305	950	1,050*
Voluntary notifications	174	175	125
Mandatory notifications ( <i>My Health Records Act 2012</i> )	28	35	1
<b>Total</b>	<b>507</b>	<b>1,160</b>	<b>1,176</b>

\* Where data breaches affect multiple entities, we may receive multiple notifications relating to the same data breach. Notifications to us about the same data breach incident are counted as a single notification in this number. End-of-year statistics may differ from 6-monthly publication statistics.



## Case Studies: Notifiable Data Breaches scheme

### Case Study 2.4.1: Notifiable data breach – human error

An employee of an organisation accidentally sent an email containing personal information about job applicants to other job applicants who were unintended recipients of the email.

The personal information disclosed included names, dates of birth, addresses and information about job applications.

On discovering the incident, the organisation took immediate steps to contain the breach. This included contacting the unintended recipients by email and telephone to request deletion of the email. The organisation received confirmation from

all the unintended recipients that they had deleted and disregarded the email.

The organisation notified the affected individuals of the data breach and engaged IDCARE to provide specialist counselling and guidance to the affected individuals.

To prevent reoccurrence of a similar data breach, the organisation took a range of steps including undertaking further security and awareness training of staff and encouraging the use of colleagues and support services for checking.

### Case Study 2.4.2: Notifiable data breach – cyber incident

As a result of a phishing attack, an organisation discovered that a number of its employees' email accounts had been accessed without authorisation.

The attacker(s) then impersonated one of the employees and sent emails to a range of the organisation's internal and external stakeholders, requesting credentials or payment of invoices.

In response to the incident, the organisation provided tailored notification to all affected individuals on recommended steps to mitigate their risk of serious harm to reflect the type(s) of personal information involved in relation to each individual.

The organisation established a dedicated call centre to provide support to affected individuals. It also engaged credit reporting bodies to provide free credit monitoring services to affected individuals to protect them from identity theft and credit fraud.

To prevent reoccurrence of a similar data breach, the organisation took a range of steps including introducing multifactor authentication and implementing further security software on every employee's email account to filter potential phishing emails from the external emails received by its employees.

## Indicator 2.5: Providing an Information Commissioner (IC) review function



### Measure

Time taken to complete IC reviews.



### Target: 80% of IC reviews are completed within 12 months

Not achieved.

We finalised 72% of IC reviews within 12 months. A significant increase in the number of IC review applications and our focus on reducing the number of cases over 12 months old prevented us from reaching our target of finalising 80% of IC reviews within 12 months.

During this reporting period we recorded another significant increase in IC review applications, receiving 1,066 – a 15% increase over 2018–19 (when 928 were received). Despite this ongoing increase, we finalised 829 IC reviews in 2019–20 (a 26% increase over 2018–19, when we finalised 659 IC reviews).

### IC reviews

An IC review is a review of a decision made by an Australian Government agency or minister subject to the FOI Act, including a decision:

- refusing to grant access to a document wholly or in part, including when an agency has been taken to refuse access because it has not made a decision within the statutory timeframe
- that a requested a document does not exist or cannot be found
- granting access to a document where a third party has a right to object (for example, if a document contains their personal information)
- to impose a charge for access to a document, including a decision to refuse to waive or reduce a charge
- refusing to amend or annotate a record of personal information.

We achieved an increase in the number of finalised IC reviews in this reporting period through a consistent focus on early intervention or informal resolution where possible. We used our regulatory powers under the FOI Act to issue notices to agencies under s 55E (to provide an adequate statement of reasons) and s 55R (notice to produce information or documents). We used various approaches to help resolve an IC review, such as narrowing the scope of a review, providing an appraisal or preliminary view, and assisting parties to reach agreement. In 2019–20, we finalised 777 IC reviews without a formal decision being made under s 55K (94%).

We finalised 154 IC reviews (19%) after the applicant withdrew their application following action taken by the agency to resolve the issues in the IC review (such as issuing a decision and statement of reasons in a deemed access refusal case, or by making a revised decision under s 55G of the FOI Act to give the applicant access to further documents or material), or after receiving our appraisal of their application's merits.

We also finalised 29 IC reviews by written agreement between the parties under s 55F of the FOI Act.

The Information Commissioner made 50 IC review decisions under s 55K of the FOI Act (which are published on AustLII).

Of these:

- 19 decisions (38%) set aside and substituted the decision under review
- 7 decisions (14%) varied the decision under review
- 24 decisions (48%) affirmed the decision under review.

These decisions help agencies interpret the FOI Act and provide guidance on the exercise of their powers and functions by addressing novel issues and building on existing IC review decisions.

Case Studies 2.5.1 and 2.5.2 describe IC review decisions made during this reporting period.

For more information see Appendix E.



### Case Study: IC review – Department of Home Affairs

#### Case Study 2.5.1: RO and Department of Home Affairs (Freedom of Information) [2020] AICmr 3 (19 January 2020)

The applicant applied to the Department of Home Affairs (the Department) for access to Australian Government policy, procedures, rules, guidelines and manuals used by case officers for processing and determining the grant or refusal of Class 600 visitor visas by case officers at the Australian High Commission in Pretoria, South Africa. The Department gave the applicant access to three documents in full.

The Information Commissioner was not satisfied that the Department took all reasonable steps to find documents within the scope of the applicant's request as it was required to under s 24A of the FOI Act. The Information Commissioner was satisfied that the Department interpreted the scope of the applicant's request too narrowly by limiting it to documents used in determining the grant or refusal of visitor visa applications relating to the applicant personally. The applicant's request was not expressly limited.

The Information Commissioner set aside the Department's decision. The Department was required to undertake further searches for documents within the scope of the applicant's request.



### Case Study: IC review – Civil Aviation Safety Authority

#### Case Study 2.5.2: Microflite Helicopter Services and Civil Aviation Safety Authority (Freedom of information) [2020] AICmr 9 (26 February 2020)

An applicant applied to the Civil Aviation Safety Authority (CASA) for access to documents regarding the process taken to investigate concerns raised by the FOI applicant regarding possible low-flying helicopters filming the 2018 Adelaide 500 Supercars event.

CASA undertook third-party consultation with Microflite in relation to 2 documents under s 27 of the FOI Act. Microflite objected to the disclosure of both documents on the basis that disclosure would adversely affect it in respect of its lawful business affairs; and would disclose information having commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed. CASA decided to release to the FOI applicant one document in full and refuse access to one document in full. In making its decision, CASA relied upon ss 47(1)(b) and 47G of the FOI Act.

Microflite then sought IC review of CASA's decision to release one document in full to the FOI applicant (access grant decision).

The Information Commissioner was not satisfied that the information could be considered to have commercial value as required by s 47(1)(b) because the information was not current; related to a particular commercial operation that had concluded; and was general rather than technical in nature. The Information Commissioner also considered that it would be unlikely that a genuine arms-length buyer would pay for the information.

The Information Commissioner affirmed the access grant decision.

## Indicator 2.6: Handling FOI complaints



### Measure

Time taken to finalise FOI complaints.



### Target: 80% of FOI complaints are finalised within 12 months

Not achieved.

During the reporting period, we finalised 71 FOI complaints, compared with 22 in 2018–19, an increase of 223%.

We finalised 52% of FOI complaints within 12 months in 2019–20. The majority of the complaints finalised were received in 2017–18 and 2018–19 which impacted on our ability to finalise 80% of all FOI complaints within 12 months.

In 2019–20, we received 109 FOI complaints. This represents a 79% increase in complaints received compared with 2018–19 (when 61 FOI complaints were received).

Of the 71 complaints finalised this year, 29 proceeded to finalisation under s 86 of the FOI Act. Of the complaints that proceeded to finalisation under s 86, the Information Commissioner made a total of 51 recommendations under s 88 of the FOI Act (which requires agencies to implement recommendations made by the Information Commissioner).<sup>1</sup>

## FOI complaints

Under s 69 of the FOI Act, the Information Commissioner has power to investigate agency actions about the handling of FOI matters.

Part 11 of the FOI Guidelines explains that where IC review is available, it is the Information Commissioner's view that making an FOI complaint is not the appropriate mechanism to resolve the matter, unless there is a special reason to undertake an investigation.

This approach supports an individual's right to access information where the outcome sought by the person is more closely related to the merits review function.

## Indicator 2.7: Conducting Commissioner-initiated investigations (FOI)



### Measure

Time taken to finalise CIIs (FOI).



### Target: 80% of CIIs (FOI) are finalised within 8 months

Not achieved.

No CIIs (FOI) were finalised in 2019–20.

Under s 69(2) of the FOI Act, the Information Commissioner may, on her own initiative, commence an investigation into an action taken by an agency in performing functions or exercising powers under the FOI Act.

During 2019–20, the Information Commissioner commenced one investigation on her own initiative into the Department of Home Affairs' compliance with the statutory processing period in the FOI Act when processing FOI requests for non-personal

<sup>1</sup> A complaint may have a number of issues.

information. The decision to commence a CII was a result of several factors including the OAIC receiving a number of FOI complaints and IC review applications related to the Department's compliance with statutory timeframes for processing requests for non-personal information.

The CII remains ongoing.

### Indicator 2.8: Targeted monitoring, guidance and advice provided



#### Measure

Submissions, guidance, advice and monitoring provided that effect change to protect privacy and access to information rights.



#### Target: Qualitatively demonstrated

Achieved.

During this reporting period, we regularly engaged with business and Australian Government agencies, providing advice and guidance on how to comply with the Privacy Act and protect privacy. This included advice on the Trusted Digital Identity Framework, privacy aspects of the 2021 Census, credit reporting issues as a result of COVID-19, and the application of the Privacy Act to the Australian Institute of Aboriginal and Torres Strait Islander Studies' collection.

We published new guidance on Privacy Impact Assessments (PIAs), including a PIA Tool, and guidance on assessing privacy risks in changed working environments. We also published guidance to assist the Australian community to understand the rights and responsibilities related to the COVIDSafe app, and for agencies and businesses to understand their privacy obligations while the Australian Bushfires Disaster Emergency Declaration is in force under the Privacy Act until its expiry on 20 January 2021.

We drafted 22 submissions on issues including the Consumer Data Right, credit reporting, artificial intelligence, the mandatory data retention regime, Australia's 2020 Cyber Security Strategy, proposed data sharing and release legislative reforms, and customer loyalty schemes.

We monitored proposed enactments and provided advice to Australian Government agencies about how to improve privacy protections in draft legislation or policy proposals.

The OAIC has been consulted on, and has made submissions and provided comment about, a range of government measures with the potential to impact on the rights of the public to access government-held information. This includes making submissions on the impact that proposed legalisation will have on information access rights, and on reports and draft guidelines issued by other Australian Government agencies and state counterparts.

In 2019–20, the OAIC revised several parts of the FOI Guidelines, including Part 3: Processing and deciding on requests for access, Part 4: Charges for providing access, Part 10: Review by the Information Commissioner, and Part 12: Vexatious applicant declarations. We also delivered a range of new and updated resources to help agencies comply with the FOI Act, including guidance on taking all reasonable steps to find documents, guidance on processing requests during the COVID-19 pandemic, sample notices and updated SmartForms.

## Privacy assessments

During this reporting period, the OAIC assessed privacy practices in the government, finance, telecommunications, health and education sectors, with 55 entities assessed and 14 assessments closed in the reporting period.

Our assessments ranged in scope from obligations under APP 1 (open and transparent management of personal information) and APP 5 (notification of the collection of personal information) to APP 11 (security of personal information).

We used a range of methods to conduct our assessments, such as desktop reviews, SmartForm privacy assessment surveys, comprehensive review of policy documents, interviews with staff, and site inspections (see Case Study 2.8.1 on page 49 and Case Study 2.8.2 on page 51). With the exception of one recommendation, the businesses and government agencies we assessed accepted all our recommendations which is consistent with last financial year. In the remaining case, the entity agreed with the intent of the recommendation but believed the risk was mitigated through other activities.

## Government

### ACT Government MOU

Under our Memorandum of Understanding (MOU) with the ACT Government we finalised our assessments of 10 ACT Government agencies, and Housing and Community Services ACT, publishing the reports in December 2019 and June 2020 respectively. For more information see Appendix C.

In 2019–20 we commenced an assessment of Access Canberra which we will finalise in 2020–21.

### Unique Student Identifiers

In 2019–20, we finalised our assessment of how the Unique Student Identifiers (USI) Office, acting

on behalf of the Student Identifiers Registrar, managed privacy controls for the USI Transcript Service. We published this report in August 2019. This assessment commenced in 2018–19, under our MOU with the Department of Education and Training acting through the Student Identifiers Registrar.

## COVIDSafe assessments

In May 2020, in response to the COVID-19 pandemic, the *Privacy Amendment (Public Health Contact Information) Act 2020* expanded our assessment powers to include the power to conduct an assessment of whether the acts or practices of an entity or a state or territory health authority comply with Part VIIIA of the Privacy Act in relation to COVIDSafe app data. In 2019–20 we commenced the first of a series of assessments in relation to the COVIDSafe app. We will finalise this assessment in 2020–21.

## Digital health assessments

Health information is considered particularly sensitive. This sensitivity has been recognised in the *My Health Records Act 2012* and *Healthcare Identifiers Act 2010*, which regulate the collection, use and disclosure of personal information, and give the Information Commissioner a range of enforcement powers. This sensitivity is also recognised in the Privacy Act which treats health information as ‘sensitive information’.

We initiated 1 assessment with 2 targets relating to the My Health Record system in 2019–20 and we closed 4 assessments, 2 of which began in the previous financial year and 2 of which began in 2017–2018. One assessment which began in 2018–19 remains open. For more information see the *Annual Report of the Australian Information Commissioner’s Activities in Relation to Digital Health 2019–20*.



## Case Study: Privacy assessment – Passenger Name Record

### Case Study 2.8.1: Privacy assessment of Department of Home Affairs' use of PNR data

The *Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record data by Air Carriers to the Australian Customs and Border Protection Service* (the Agreement) governs the transfer of Passenger Name Record (PNR) data to Australia from the European Union (EU). The Department of Home Affairs (Home Affairs) receives EU PNR data from air carriers when the information necessary for processing or controlling a passenger's air travel reservation for a flight to, from, or through Australia is processed in the EU.

Importantly, the Agreement also sets out oversight and accountability arrangements for parties to the Agreement in relation to that PNR data, including oversight by the Australian Information Commissioner (Article 10, para 1) through regular formal audits of all aspects of Home Affairs' EU-sourced PNR data use, handling and access policies and procedures.

To assure Home Affairs' compliance with the Agreement, we undertook a privacy assessment of Home Affairs under s 33C(1)(a) of the Privacy Act and in accordance with the Memorandum of Understanding (MOU) between Home Affairs and the OAIC.

This privacy assessment sought to establish whether Home Affairs is using and disclosing PNR data in accordance with its obligations under APP 6, and whether it is taking reasonable steps to secure the personal information it holds under APP 11.

In particular, we considered Home Affairs' APP 6 and APP 11 obligations in relation to the connected information environment (CIE) that Home Affairs is developing. The CIE is a project designed to enhance Home Affairs' intelligence capabilities. We focused primarily on the entity search capabilities that form part of the CIE.

To undertake the privacy assessment, we reviewed relevant policies and procedures provided by Home Affairs before and after assessment fieldwork, and conducted fieldwork, which included interviewing key members of staff and reviewing further documentation at the Home Affairs office in Canberra on 26 March 2018.

Our assessment identified several medium-level privacy risks in relation to the handling of PNR data and we made 5 recommendations for Home Affairs to take action to rectify those risks. The OAIC also made an additional suggestion to assist Home Affairs to enhance the privacy protective measures it employs. We published the assessment report on 19 December 2019.



## Data matching

We perform several functions to help government agencies understand their privacy requirements and adopt best privacy practice when undertaking data-matching activities.

Data matching is the process of bringing together data sets that come from different sources and comparing those data sets with the intention of producing a match. Several government agencies use data matching to detect non-compliance, identify instances of fraud and recover debts owed to the Australian Government. For example, to identify individuals or businesses that may be under-reporting income or turnover, the Australian Taxation Office (ATO) may match tax return data with the data provided by banks.

Government agencies that carry out data-matching activities must comply with the Privacy Act. The *Data-matching (Assistance and Tax) Act 1990* (Data-matching Act) authorises the use of tax file numbers in data-matching activities undertaken by specific agencies. Data matching raises privacy risks because it involves analysing personal information about large numbers of people, the majority of whom are not under suspicion of non-compliance.

### Statutory data matching

The Information Commissioner has statutory responsibilities under the Data-matching Act. The Data-matching Act authorises the use of tax file numbers in data-matching activities by the Department of Human Services (DHS), the

Department of Veterans' Affairs and the ATO.<sup>2</sup> In previous financial years, we have inspected DHS's data-matching records to make sure they comply with the requirements of the Data-matching Act. Agencies continue to rely less on data matching using tax file numbers, so this financial year we again focused on providing advice and oversight of data-matching activities outside the Data-matching Act.

In 2019–20, we finalised our assessments of the Non-Employment Income Data Matching (NEIDM) program and the Pay-As-You-Go (PAYG) program, both commenced in 2017–2018.

During this reporting period we also finalised a privacy assessment which looked at the role of the ATO as a source of data for DHS's data-matching activities. Specifically, the assessment looked at whether the ATO is taking reasonable steps under APP 11 to secure personal information handled by the PAYG and NEIDM programs.

### Data matching under the voluntary guidelines

We administer the Guidelines on data matching in Australian Government Administration, which are voluntary guidelines to help government agencies adopt appropriate privacy practices when undertaking data-matching activities not covered by the Data-matching Act. In this financial year we reviewed 10 data-matching program protocols submitted by matching agencies including Services Australia and the ATO. We also provided advice on 3 occasions regarding protocols generally to the Fair Work Ombudsman and Services Australia.

<sup>2</sup> On 1 February 2020 DHS became Services Australia.





## Case Study: Privacy assessment – telecommunications service providers

### Case Study 2.8.2: Privacy assessment of the compliance of Telstra, Optus, Vodafone and TPG with information security obligations

We have conducted a series of privacy assessments of 4 telecommunications service providers: Telstra, Optus, Vodafone and TPG. We conducted the fieldwork component of the assessments of Telstra and TPG in the 2017–18 financial year, and of Optus and Vodafone in the 2018–19 financial year. We published a summary assessment report on 6 February 2020.

These assessments considered whether the telecommunications service providers were meeting their information security obligations under APP 11 — Security of Personal Information, for the personal information they are required to retain under the ‘data retention scheme’ (DRS). The DRS came into full effect on 13 April 2017. The DRS requires telecommunications service providers to retain certain types of telecommunications data for a minimum of 2 years (retained data), and to comply with the Privacy Act in relation to that data. In practice, this means that service providers participating in the DRS have information security obligations in general to:

- protect the confidentiality of their retained data through encryption, and from unauthorised interference and access, in accordance with the *Telecommunications (Interception and Access) Act 1979*
- take such steps as are reasonable in the circumstances to protect retained data from misuse, interference and loss, as well as unauthorised access, modification or disclosure, in accordance with APP 11 in Schedule 1 to the Privacy Act.

The assessments were risk-based and focused on identifying privacy risks to the secure handling of personal information. They involved a review of

documentation that set out relevant policies and practices of telecommunications service providers, site visits, and interviews with key staff.

The assessments found that, in general, the information security practices of service providers aligned with the obligations under APP 11. However, 3 of the 4 service providers had not created detailed rules for the destruction or de-identification of retained data after the mandatory 2-year retention period (which had not yet passed at the time of the assessments). We noted that the creation of detailed policies and rules in this area will be increasingly important for all service providers with obligations under the DRS, as the volumes of retained data increase over time.

## Privacy advice

The OAIC made 22 submissions in 2019–20 covering a wide range of topics including submissions to:

- ACMA regarding Telecommunications (Mobile Number Pre-Porting Additional Identity Verification) Industry Standard 2020
- ACCC regarding the BP Rewards, Qantas Frequent Flyer and Qantas Business Rewards loyalty program
- the Senate Standing Committee on Legal and Constitutional Affairs regarding the Inquiry into the provisions of the Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019
- ACCC regarding the customer loyalty schemes review
- Department of Health regarding the Exposure Draft: Health Legislation Amendment (Data-matching and Other Matters) Bill 2019
- Independent National Security Legislation Monitor regarding the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018*
- Australian Government regarding the Digital Platforms Inquiry final report

- Parliamentary Joint Committee on Intelligence and Security regarding the review of the amendments made by the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2019*.

The OAIC has published a suite of guidance for regulated entities and individuals relating to personal information handling practices during the COVID-19 pandemic. For more information see Table 2.10.1 on page 58.

## FOI Guidelines

In 2019–20, the OAIC revised and reissued Part 3: Processing and deciding on requests for access, Part 4: Charges for providing access, Part 10: Review by the Information Commissioner, and Part 12: Vexatious applicant declarations of the FOI Guidelines.

## FOI agency resources

During 2019–20, we published a range of new and updated resources to assist Australian Government agencies to comply with the FOI Act. These resources included:

- Processing FOI requests: taking all reasonable steps to find documents (new)
- Making a decision on an FOI access request (updated)
- Statement of reasons checklist (updated)
- Sample FOI notice – access refusal decision (updated)
- Sample FOI notice – internal review decision (updated)
- How far should an agency search for a document? (updated FAQ).

To help agencies process FOI requests during the COVID-19 pandemic, the OAIC issued advice on how to continue to make decisions on FOI requests within the statutory timeframes in the FOI Act.

We also updated our FOI SmartForms to make it easier for agencies to apply for extensions of time to process FOI requests.

## Indicator 2.9: Provide a public information service



### Measure

Time taken to finalise written enquiries.



**Target: 90% of written enquiries are finalised within 10 working days**

Not achieved.

The OAIC offers a free public information service on privacy-related matters. Our service is delivered through handling phone and written enquiries.

The enquiries team moved to working remotely from 25 March 2020 in response to the COVID-19 pandemic and the OAIC's Enquiries Line changed from an anonymous call-in service to a voicemail/call back service. This change impacted on the percentage of written privacy enquiries finalised within 10 working days. In 2019–20 we finalised 76% of written privacy enquiries within 10 working days, down from our 2018–19 response rate of 92%.

## Privacy enquiries

During this reporting period, we answered 10,937 phone enquiries and responded to 3,893 written enquiries. We also responded to 12 in-person enquiries. The enquiries received from the community were in relation to a broad range of areas. More than 60% of all phone enquiries about privacy matters concerned the operation of the APPs. We also continued to receive a significant proportion of enquiries about credit reporting and the Notifiable Data Breaches scheme. We received 60 phone enquiries about spent convictions.

As a part of our MOU with the Australian Capital Territory (ACT) Government we continued to provide privacy services to ACT public sector agencies,

including responding to enquiries from the public about the *Information Privacy Act 2014* (ACT) and its Territory Privacy Principles. For more information see Appendix C.

### Privacy enquiries by issue

During this reporting period the most common privacy enquiries we received were about access to an individual's own personal information (APP 12), exceptions to the APPs, followed by security of personal information (APP 11), and the use and disclosure of personal information (APP 6).

**Table 2.9.1:** Phone enquiries related to APPs

Issue raised in phone enquiry	Number
APP 1 — Open and Transparent Management of Personal Information	47
APP 2 — Anonymity and Pseudonymity	11
APP 3 — Collection of Solicited Personal Information	727
APP 4 — Dealing with Unsolicited Personal Information	10
APP 5 — Notification of the Collection of Personal Information	440
APP 6 — Use or Disclosure of Personal Information	788
APP 7 — Direct Marketing	82
APP 8 — Cross-Border Disclosure of Personal Information	42
APP 9 — Adoption, Use or Disclosure of Government Related Identifiers	14
APP 10 — Quality of Personal Information	62
APP 11 — Security of Personal Information	798
APP 12 — Access to Personal Information	1,051
APP 13 — Correction of Personal Information	115
Exceptions	844
General enquiries	1,589

**Note**

There may be more than one issue handled in an enquiry.

We also handled questions about other privacy issues, reflecting the broad range of matters the OAIC regulates. Table 2.9.2 categorises these enquiries.

**Table 2.9.2:** Phone enquiries on other privacy matters

Issue raised in phone enquiry	Number
Notifiable Data Breaches scheme	369
Credit reporting	296
Spent convictions	60
Data breach notification (voluntary)	54
Tax file numbers	26
Consumer Data Right or Open Banking	8
Data matching	7
My Health Record	4
Privacy codes	3
Healthcare Identifier	2
Privacy safeguards	2
<b>Total</b>	<b>831</b>

**Note**

There may be more than one issue handled in an enquiry.



### Case Study: Privacy enquiry – collection of passport information

#### Case Study 2.9.1: Privacy enquiry – collection of passport information by airline

An individual advised the OAIC that they were concerned about providing a copy of their passport to an airline.

An enquiries officer advised that international companies with an Australian link are subject to the Privacy Act under s 5B. The Privacy Act regulates the handling of personal information by Australian Government agencies and many private organisations through the APPs.

Regulated entities may only collect information that is reasonably necessary to perform their tasks or operations. If information is collected for a specific purpose it can only be used or disclosed for that purpose unless the individual consents, or an exception applies. Entities must also take reasonable steps to ensure the information is kept securely and destroyed or de-identified when it is no longer being used.

The enquiries officer advised that if the individual believed the entity had not complied with its obligations under the Privacy Act they may make a privacy complaint as outlined on our website.

## FOI enquiries

The OAIC handles enquiries from the public on FOI issues, including the IC review function.

During this reporting period, we experienced a 20% decrease in FOI enquiries from 2018–19. The OAIC answered 1,524 telephone calls and responded to 772 written enquiries about FOI.

Most enquiries were about the OAIC's jurisdiction (42%) and general processes for FOI applicants (40%), including how to make an FOI request or complaint, or seek review of an FOI decision.

**Table 2.9.3:** FOI enquiries by issue

Issue	Number
OAIC's jurisdiction	969
General processes	943
Agency statistics	275
Processing by agency	174
Access to general information	23
Access to personal information	10
Vexatious application	4
Information Publication Scheme	4
Amendment and annotation	3

### Note

There may be more than one issue handled in an enquiry.

## Indicator 2.10: Increase in community awareness and understanding of privacy and information access rights



### Measure

(1) Visits to OAIC website.



### Target: Increase in website traffic

Achieved.

The OAIC launched a new website on 22 July 2019. A high-level analysis of quantitative website data has shown that the OAIC website recorded an increase in visits from 2018–19 to 2019–20 and is providing content that is more relevant and engaging.

OAIC website visitors are viewing more pages, spending more time on those pages and 'bouncing' (leaving a page immediately without taking an action) less. Comparing website data for the 2019–20 financial year (new website) against 2018–19 (previous website):

- total site visits increased by 13% to 1,921,125
- bounce rate decreased by 12% to 54%
- average time on site increased by 20% to 3 minutes 20 seconds
- average page depth increased by 14% to 2.5 pages per visit.



### Measure

(2) Social media engagement.



### Target: Qualitatively demonstrated

Achieved.

The OAIC has grown its presence on social media in 2019–20 and it has been an important communication channel during the COVID-19 pandemic. We actively promoted awareness of privacy and information access rights through social media channels, resulting in increased followers, page likes and post impressions across Twitter, Facebook and LinkedIn.

### Twitter

Growth has been steady through the year, with 5,837 followers as at 30 June 2020. This is a growth of 12%. During the reporting period we have achieved more than 1.2 million tweet impressions.

### Facebook

Growth has been steady through the year, with 3,304 followers as at 30 June 2020. This is a growth of almost 15%.

### LinkedIn

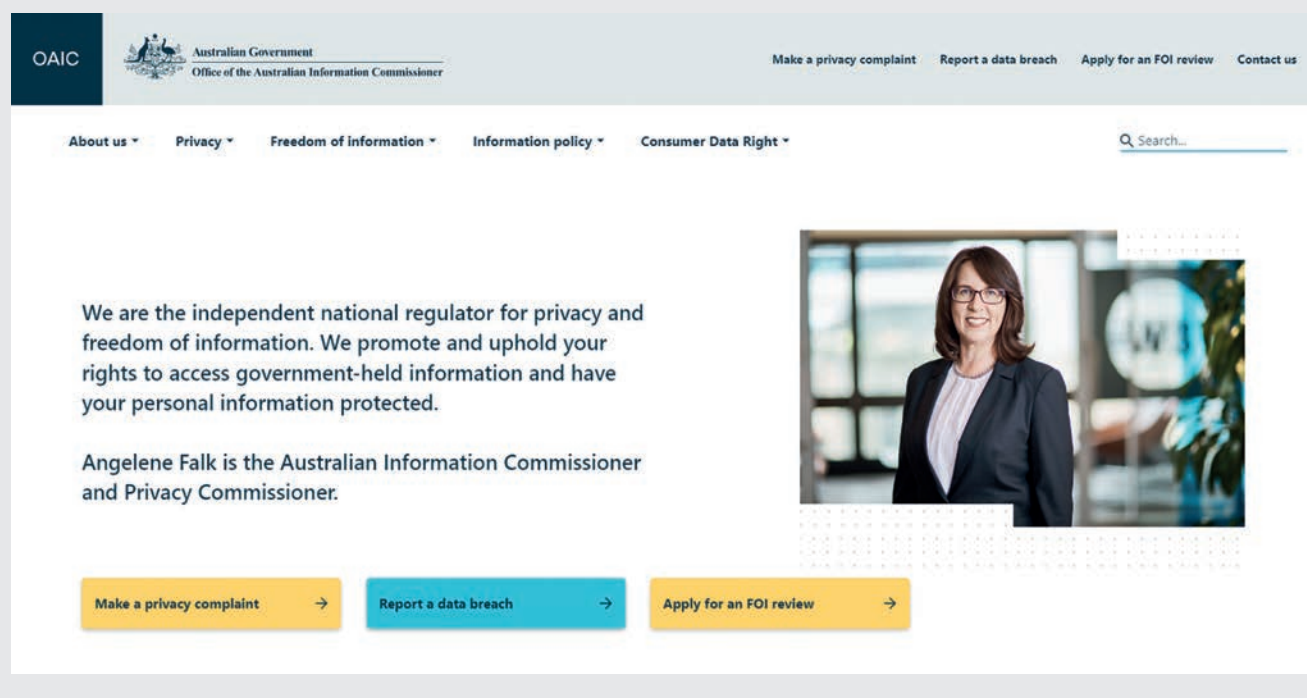
Our followers have grown rapidly through the year, with 3,593 followers as at 30 June 2020. This is a growth of over 50%.

## New OAIC website

The OAIC website is a key communication channel to reach the community, government and business. Following development of the website in 2018–19 to make it easier to navigate and more user-friendly, we beta-tested the site in July 2019 to allow us to further refine the design.

The responses we received to the beta website testing were positive: 88% of users rated the content findable, 86% rated the content useful and 96% rated the website positively.

User feedback also noted improvements in the content (easier to understand, clear, concise and better organised) and user experience (ease of use, navigation, look and feel).





## e-learning courses

The OAIC launched its new e-learning course *Privacy in Practice* on 17 April 2020, following user testing with staff from 30 Australian Government agencies. The module was developed to help staff understand the importance of privacy in their agency, and how to meet their privacy obligations in their day-to-day work.

The course can also assist agencies to meet privacy training obligations under the Australian Government Agencies Privacy Code. Several agencies have indicated they intend to include the course with induction training and as an annual refresher for staff who handle personal information.

Like the OAIC's first e-learning course *Undertaking a Privacy Impact Assessment* (launched in May 2017), *Privacy in Practice* is free and open to anyone to use. On average, about 100 people completed the course each week between its launch and the end of June 2020, including users from the government,

business, education, and community/not-for-profit sectors.

Feedback from users has been overwhelmingly positive, highlighting the clarity and conciseness of the content and examples, and the engaging and interactive nature of the course.

### *Privacy in Practice* course snapshot

Privacy is central to the work of Australian Government agencies. If you work for an agency, the community trusts you to look after the valuable personal information that your agency holds. In your day-to-day work, you are required to handle personal information within the requirements of the Privacy Act.

This e-learning program aims to introduce you to the Privacy Act and provide you with practical advice and guidance on good privacy management practices within your agency. It is suitable for all Australian Government agency staff, especially if you handle personal information in your day-to-day work.

**Welcome to Privacy in Practice**  
© TOTAL COURSE TIME: APPROXIMATELY 1 HOUR

Welcome to the Office of the Australian Information Commissioner's (OAIC) eLearning course for Australian Government agencies.

This course aims to introduce you to the Privacy Act 1988 (the Privacy Act) and provide you with practical advice and guidance on good privacy management practices.

**Should I do this course?**

The course is designed for Australian Government agencies covered by the Privacy Act and is suitable for all agency staff, especially those who handle personal information in their day-to-day work.

Contracted service providers for Commonwealth contracts may also find this course useful to understand the Privacy Act and the Australian Privacy Principles (APPs).

**About this course**

There are three modules in this course:

- Module 1 is an introduction to the Privacy Act and the key concepts
- Module 2 covers the handling of personal information
- Module 3 covers the ways your agency manages privacy issues.

Each module includes:

- learning objectives
- an introductory video
- course content
- learning activities to assess your knowledge

**Privacy in Practice**  
MINIMISE NAVIGATION

0%  
★

🔍 Welcome to Privacy in Practice

**MODULE 1**  
Introduction to the Privacy Act and key concepts  
Understanding privacy  
Personal information  
Consent

**MODULE 2**  
Handling personal information  
Understanding why you are handling it  
When can you collect it?  
Notifying individuals about collection  
Using and disclosing it  
Keeping it safe  
Retaining and de-identifying it

**MODULE 3**  
Understanding privacy in your agency  
Personal privacy responsibilities  
Key people  
Important privacy documents  
Privacy Impact Assessments  
Data breaches

📄 Course recap and certificate

🔄 Restart the course

### ***Undertaking a Privacy Impact Assessment course snapshot***

A privacy impact assessment (PIA) is a systematic assessment of a project that identifies the impact that the project might have on the privacy of individuals, and sets out recommendations for managing, minimising or eliminating that impact. PIAs are an important component in the protection of privacy, and should be part of the overall risk management and planning processes of organisations and Australian Government agencies.

This e-learning program complements the OAIC's *Guide to undertaking privacy impact assessments*, and aims to give you information on conducting a PIA in an easy-to-understand format so that you can have the confidence to do a PIA in your organisation or agency.

### **Information Matters newsletter**

Our monthly Information Matters e-newsletter goes to more than 7,700 subscribers. It provides news about the latest guidance and resources published by the OAIC, information about consultations and other engagement, and links to decisions and submissions.

### **Digital campaigns**

#### ***Health privacy campaign***

In September 2019 the OAIC brought together its guidance for health service providers into the *Guide to health privacy*. Unlike other sectors of the economy, all private health service providers are covered by the Privacy Act, and the sector is consistently the highest reporting sector under the NDB scheme.

To increase awareness of the sector's privacy obligations and promote better privacy practice, the OAIC ran a campaign to coincide with the guide's publication, including a news story, letters and emails to key stakeholders, and an external communications toolkit to support the promotion of the guide by third parties. We also ran a 10-week social media campaign, including 40 social media posts across Facebook, Twitter and LinkedIn. The post with the most engagement highlighted the importance of privacy training for health sector staff.

The campaign delivered coverage of the guide's publication in digital news outlets, as well as promotion by major health bodies and associations, including the Australian Commission on Safety and Quality in Health Care, Royal Australian College of General Practitioners and the Australian Medical Association.

#### ***Joint online shopping campaign***

In the lead up to the Black Friday sales in November 2019 and the Christmas season, the OAIC ran a campaign to raise awareness of online shopping risks in collaboration with the Office of the eSafety Commissioner, the Australian Cyber Security Centre and the Australian Competition and Consumer Commission. As part of the campaign the OAIC led the delivery of creative assets for use by all 4 agencies.

The timeliness of the campaign and cross-promotion between agencies resulted in high engagement rates across social media channels.

## COVID-19 resources

In April 2020 the OAIC added a prominent banner to its website to promote awareness of advice and guidance for individuals, agencies and organisations during the COVID-19 pandemic. The banner linked to the OAIC COVID-19 information page which was ranked 27th in page views for the April–June quarter.

The OAIC published 7 pieces of guidance and 7 media items in response to the pandemic, the COVIDSafe app and working from home during the second half of the reporting period.

**Table 2.10.1:** Guidance related to COVID-19 pandemic

Page	Publication date	Page views to 30 June 2020
Coronavirus (COVID-19): Understanding your privacy obligations to your staff	18 March 2020	15,874*
Assessing privacy risks in changed working environments: Privacy Impact Assessments	6 April 2020	3,375
Guidance for businesses collecting personal information for contact tracing	29 May 2020	2,046
The COVIDSafe app and my privacy rights	16 May 2020	1,794
How can agencies meet statutory timeframes during the COVID-19 pandemic?	18 March 2020	640
FOI and COVID-19 FAQs	30 April 2020	258
Privacy obligations regarding COVIDSafe and COVID app data	30 June 2020	8

\* This was the 15<sup>th</sup> most viewed page at [www.oaic.gov.au](http://www.oaic.gov.au) for the period ending 30 June 2020.

## Events

In 2019–20, the OAIC participated in 25 speaking engagements. This was lower than 2018–19 due to the COVID-19 pandemic which resulted in some events being postponed or cancelled. We took part in the following external events:

- Australian Institute of Administrative Law's National Administrative Law Conference, Canberra, July 2019
- a panel discussion on 'Privacy in Health' for an International Association of Privacy Professionals event, Perth, September 2019
- National Cyber Security Education Conference, Sydney, September 2019
- keynote opening address for the International Association of Privacy Professionals Australia and New Zealand Summit, Sydney, October 2019
- Global Privacy Assembly/OECD 'Online Workshop on Addressing the Data Governance and Privacy Challenges in the Fight against COVID-19', April 2020
- Institute of Public Administration Australia's Work with Purpose podcast, June 2020.

## Privacy in a pandemic webinar

For Privacy Awareness Week 2020, we partnered with OneTrust for a webinar exploring the importance of privacy in a pandemic which attracted almost 500 attendees. Commissioner Angelene Falk was joined by New Zealand Privacy Commissioner John Edwards, IDCare's Managing Director David Lacey, and Internet Initiative Japan Principal Consultant Taiji Miyaoka to discuss and explore the privacy implications of the pandemic. The webinar was held at a critical time as businesses and organisations around the world transitioned to remote work while seeking to promote good privacy practice.



## Media enquiries

In 2019–20 we received 217 media enquiries which was a 9% decrease compared with the previous reporting period.

**Table 2.10.2:** Media enquiries received in 2019–20

Month	2018–19	2019–20
July	55	20
August	21	20
September	9	17
October	30	28
November	20	9
December	16	9
January	19	18
February	11	10
March	8	26
April	21	29
May	18	18
June	10	13
<b>Total</b>	<b>238</b>	<b>217</b>

## Key focus area: Implement the Consumer Data Right

The OAIC is supporting the implementation of the Consumer Data Right (CDR) to provide greater choice and control for Australians over how their data is used and disclosed. We have worked with our co-regulator, the Australian Competition and Consumer Commission (ACCC), to implement the Consumer Data Right in the financial sector. We have worked to establish an effective privacy complaints system, and deliver guidance and education materials to support participants and consumers.

### Indicator 2.11: Open Banking is implemented with strong privacy protections



#### Measure

(1) Project milestones met.



#### Target: 90% of project milestones achieved

Achieved.

The OAIC has a Consumer Data Right project plan, which sets out key deliverables and deadlines. Implementation is overseen by an internal CDR Governance Board.

By 30 June 2020, 96% of the project's milestones were achieved, including:

- publication of guidance and educational materials for consumers and regulated entities to support a clear understanding of rights and obligations under the Consumer Data Right
- processes to support efficient and effective Consumer Data Right complaint-handling
- internal training and resources to ensure our enquiries team is well equipped to answer questions from the public under the Consumer Data Right.

**Measure**

(2) Ongoing advice is provided and integrated into the scheme.

**Target: Qualitatively demonstrated**

Achieved.

On 1 July 2020, the Consumer Data Right (CDR) commenced in the banking sector (where it is called Open Banking).

In the lead up to 1 July 2020, the OAIC worked closely with the Treasury and the ACCC to ensure strong privacy and accountability measures have been built into the Consumer Data Right system. This included the provision of advice to the ACCC on the development of the rules. Many of the OAIC's recommendations were reflected in the rules made by the ACCC that entered into force on 6 February 2020.

We also engaged regularly with the Data Standards Body (CSIRO's Data61), including through the provision of advice on development work for the guidelines relating to consumer experience and attendance as observers on the Data Standards Advisory Committee meetings for the banking and energy sectors.

The OAIC continues to provide privacy advice to the Treasury and the ACCC regarding the implementation of the Consumer Data Right, including the roll out of the Consumer Data Right to the energy sector, the Inquiry into Future Directions for the Consumer Data Right, and guidance on general privacy matters affecting the Consumer Data Right system.

## Indicator 2.12: The OAIC promotes awareness of CDR privacy rights

**Measure**

Education and awareness materials are developed and promoted.

**Target: Qualitatively demonstrated**

Achieved.

In preparation for the start of the Consumer Data Right on 1 July 2020, the OAIC developed and promoted a range of education and awareness materials to help consumers and regulated entities understand their privacy rights and obligations.

This includes information for consumers on how their data should be managed and protected, and how to complain to the OAIC if they consider an entity has mishandled their data.

The OAIC developed Privacy Safeguard Guidelines to provide guidance for participants in understanding and interpreting the 13 privacy safeguards under the Consumer Data Right. The OAIC finalised these guidelines following consultation with industry, the Treasury, the ACCC and other key stakeholders.

The OAIC also developed a CDR Regulatory Action Policy, which explains the agency's powers and how we will exercise them. A joint Compliance and Enforcement Policy was developed in partnership with the ACCC to outline the approach we intend to take to encourage compliance, and how we will respond to breaches of the regulatory framework.

Education and awareness materials were promoted through a dedicated section on the OAIC's website, media releases, Information Matters newsletters, and social media channels.

### Indicator 2.13: Community uses complaints mechanism to protect their privacy rights



#### Measure

Complaint handling mechanism for the CDR is operational and actively used.



#### Target: Complaint volumes reflect awareness and accessibility of complaint handling mechanism

Not applicable.

Following publication of the *OAIC Corporate Plan 2019–20*, the start date for the Consumer Data Right in the banking sector moved from 1 February 2020 to 1 July 2020.

In preparation for the receipt and management of Consumer Data Right complaints, the OAIC liaised with the ACCC and with the Australian Financial Complaints Authority (as the recognised EDRS for the Consumer Data Right in the banking sector). The OAIC also developed a joint complaint handling tool, accessible to consumers via the [cdr.gov.au](https://cdr.gov.au) website.

## Strategic Priority 3

### Encourage and support proactive release of government-held information

The OAIC develops initiatives that facilitate a proactive approach to providing access to government-held information. These promote better use of government-held information to support innovation and inform policy while ensuring appropriate privacy safeguards are in place.

#### Key focus area: Develop government capability

The OAIC works with Australian Government agencies to develop their capability in applying and understanding the objects of the FOI Act. We undertake proactive regulatory activity including providing guidance to promote greater access to government-held information.

We update our resources regularly to assist agencies and ministers to apply the FOI Act, and we actively promote the Information Publication Scheme (IPS) to support government transparency initiatives.

#### Indicator 3.1: Improvements in FOI review trends and FOI complaints trends



##### Measure

Number of FOI requests to government agencies and FOI complaints.



##### Target: Decrease (implementation underway)

Not achieved.

The number of FOI requests made to Australian Government agencies and ministers increased by 6% in 2019–20, when compared with 2018–19.

In 2019–20, the OAIC received 109 FOI complaints about actions taken by agencies when handling FOI requests. This is a 79% increase over 2018–19 when 61 FOI complaints were received.

The most common complaints about the handling of FOI requests by agencies continue to be about delays in processing. Other complaints include:

- problems with how agencies conduct consultation under practical refusal provisions
- problems with how agencies conduct third-party consultations
- transfer of requests under s 16 of the FOI Act
- imposition of charges to process FOI requests
- agencies' compliance with IPS and disclosure logs
- not acknowledging FOI requests within 14 days.

## FOI processing statistics received from Australian Government agencies and ministers

Agencies and ministers must report FOI statistics to the OAIC every 3 months and at the end of the financial year.

These reports show the number of FOI requests received across Australian Government agencies increased by 6% from 38,879 in 2018–19 to 41,333 in 2019–20.<sup>3</sup> This increase was experienced in both requests for personal information and other (non-personal) information; however, the increase in the number of other requests was more pronounced (20% higher than 2018–19) than personal requests (4% higher than 2018–19).

In 2019–20, 33,584 or 81% of all FOI requests were for documents containing personal information. This is lower than in previous years when between 82% (2017–18 and 2016–17) and 87% (2015–16) of all requests were for personal information.

In 2019–20, the Department of Home Affairs, Services Australia and the Department of Veterans' Affairs together continued to receive the majority of FOI requests (70% of the total). Of these, 95% were requests for access to personal information.

The percentage of FOI requests processed within the applicable statutory time period decreased from 83% in 2018–19, to 79% in 2019–20. There has been a decrease in timeliness of decision-making over the past 3 years from 2017–18 when 85% of all decisions were decided within the applicable statutory time period.

The percentage of FOI requests granted in full decreased from 52% of all requests in 2018–19 to

47% in 2019–20; the percentage granted in part increased from 35% in 2018–19 to 38%; and the percentage of requests refused increased from 13% of all FOI requests in 2018–19 to 15% in 2019–20.

The personal privacy exemption in s 47F of the FOI Act remains the most claimed exemption (38% of all exemptions claimed – the same as in 2018–19).

The total reported costs attributable to processing FOI requests in 2019–20 was \$63.91 million, a 7% increase on 2019–20 (\$59.85 million).

Australian Government agencies and ministers issued 3,803 notices advising of an intention to refuse a request for a practical refusal reason in 2019–20. This is a 71% increase on the number issued in 2018–19. Of these requests, 88% were subsequently refused or withdrawn; that proportion was 77% in 2018–19.

There was a 25% decrease in the total charges notified in 2019–20 and a 28% decrease in the total charges collected by Australian Government agencies (\$88,090).

The total number of entries added to agency website disclosure logs in 2019–20 (1,949) is 62% higher than 2018–19, when 1,200 new entries were added.

There was a 5% increase in internal review applications in 2019–20. Of the 890 internal review decisions, 442 (49%) affirmed the original decision, 138 (15%) set aside the original decision and granted access in full, 235 (26%) granted access in part, 13 (1%) granted access in another form, 14 (2%) resulted in lesser access and applicants withdrew 43 applications (5%) without concession by the agency. Agencies reduced the charges levied as a result of internal review in 4 reviews (1%).

<sup>3</sup> Figures have been rounded to the nearest whole number. For more information see Appendix E: FOI statistics.

### Indicator 3.2: Improvements in time taken to respond to FOI requests



#### Measure

FOI requests determined and processed within the applicable statutory time period.



#### Target: Increase percentage

Not achieved.

The number of FOI requests decided within the applicable statutory time period decreased from 83% in 2018–19 to 79% in 2019–20.

The standard timeframe to process an FOI request is 30 days. However, the FOI Act contains a number of extension of time provisions.

### FOI extensions of time

The FOI Act sets out timeframes within which agencies and ministers must process FOI requests.

When an agency or minister is unable to process an FOI request within the statutory processing period, they may apply for an extension of time from the FOI applicant or the Information Commissioner.

If the applicant agrees to an extension of time in writing, the agency or minister must advise the Information Commissioner of the agreement to extend the statutory processing time as soon as practicable.

An agency or minister can apply to the Information Commissioner for an extension of the processing period if they can demonstrate that processing the FOI request will take longer than the statutory timeframe because it is voluminous or complex in nature (s 15AB of the FOI Act).

An agency or minister can also apply to the Information Commissioner for an extension of the processing period where they have been unable to process the request within the statutory timeframe, and are deemed to have made a decision refusing the FOI request (ss 15AC, 51DA and 54D of the FOI Act). See Tables 3.2.1 and 3.2.2.

Overall, we received 12% more applications for extensions of time during this financial year when compared with 2018–19. There was a significant increase in the number of extension of time applications made under s 15AC (174%) closed during this financial year compared to 2018–19.

When applying for extensions of time in the last 2 quarters of this year, agencies provided reasons why the FOI request could not be processed within the statutory timeframe which related to the COVID-19 pandemic. Reasons included the diversion of resources to frontline services.

An update to the extension of time online SmartForm, which is used by agencies to lodge applications for extensions of time with the OAIC, has assisted in the processing of extension of time applications.

**Table 3.2.1:** FOI extension of time (EOT) notifications and requests received and closed

Year	2017–18	2018–19	2019–20
Received	3,367	3,784	4,244
Closed	3,333	3,779	3,844

**Table 3.2.2:** FOI extensions of time (EOT) notifications and requests closed, by type

Request type	2017–18	2018–19	2019–20
Section 15AA (notification of EOT agreements between agency and applicant)	2,762	2,959	2,393
Section 15AB (request to OAIC by agency where voluminous or complex)	370	562	786
Section 15AC (request to OAIC by agency where deemed refusal decision)	122	178	492
Section 51DA (request to OAIC by agency for EOT for dealing with amendment/annotation request)	1	1	5
Section 54B (extension of the period to make an internal review request made by agency)	–	1	0
Section 54D (request to OAIC by agency for EOT where deemed affirmation on internal review)	38	37	80
Section 54T (request to OAIC for EOT for person to apply for IC review)	40	41	88
<b>Total</b>	<b>3,333</b>	<b>3,779</b>	<b>3,844</b>

## Key focus area: Influence information management framework

The OAIC works with stakeholders to improve access to government information to support public participation and engagement and strengthen trust in government. We engage with ministers and agencies to promote understanding of obligations under the FOI Act and help ensure that FOI policy and practice continues to meet the expectations of the Australian community.

We are contributing to the third Open Government National Action Plan and we engage with our domestic and international counterparts to promote information access rights.

## Indicator 3.3: More government-held information is published proactively



### Measure

Information available on agency websites.



### Target: Benchmark number of agency documents published under the IPS and disclosure logs

Partially achieved.

During 2019–20, the OAIC undertook a desktop review of agency compliance with the disclosure log requirements in s 11C of the FOI Act. The results of this survey are being finalised and will be published in 2020–21.

Work to benchmark the number of documents published by agencies under the IPS was not undertaken in 2019–20. Consideration is being given to undertaking this in 2020–21.

### FOI vexatious applicant declarations

The Information Commissioner has the power to declare a person to be a vexatious applicant if she is satisfied that the grounds in s 89L of the FOI Act exist.

During 2019–20, the Information Commissioner received 3 applications from agencies under s 89K of the FOI Act seeking to have a person declared a vexatious applicant. One application was finalised in 2019–20, with a declaration being made under s 89K of the FOI Act. Two applications are ongoing.

Declarations are available in the Australian Information Commissioner (AICmr) database published on AustLII.

### Information Publication Scheme

The OAIC continues to promote the Information Publication Scheme (IPS) to agencies to encourage the publication of a wide range of corporate information on agency websites. Our focus this year has been on emphasising that the IPS does not limit the information that can be published to only the information required to be published under s 8(2) of the FOI Act, but authorises the publication of any other information (see s 8(4) of the FOI Act). Proactively making more information available to the public has the potential to reduce the number of FOI requests made to Australian Government agencies.

In 2019–20, we produced an information resource for senior executives that highlights their critical role in setting the standard for their agency's compliance with its IPS requirements.

We also worked with the Attorney-General's Department to survey data champions in Australian Government agencies about their experience with and understanding of the IPS. The survey results will be used to inform future education activities.

### Indicator 3.4: Increase in community awareness and understanding of information access rights



#### Measure

(1) Visits to OAIC website.



#### Target: Increase in website traffic

Achieved.

A high-level analysis of quantitative website data has shown that the OAIC website has recorded an increase in visits from 2018–19 to 2019–20 and is providing content that is more relevant and engaging. For more information see Indicator 2.10 on page 54.



#### Measure

(2) Social media engagement.



#### Target: Qualitatively demonstrated

Achieved.

The OAIC steadily grew its social media channels throughout 2019–20, including Twitter (12% follower growth), Facebook (almost 15% follower growth) and LinkedIn (over 50% follower growth). For more information see Indicator 2.10 on page 54.

### Disclosure logs

During 2019–20, the OAIC undertook a desktop review of agency compliance with the disclosure log requirements in s 11C of the FOI Act. The results of this survey are being finalised and will be published in 2020–21.



## Right to Know Day 2019

The OAIC's Right to Know Day 2019 campaign ran from 28 August to 1 October 2019, raising awareness about information access through a campaign website, digital promotion and an information session for members of the OAIC's Information Contact Officers Network (ICON).

The 2019 Right to Know Day campaign website hosted promotional materials, FOI videos, infographics with tips for applicants and agencies, and links to useful resources. A supporter toolkit was also distributed to help Australian Government agencies and ICON members mark Right to Know Day.

The OAIC issued a joint media statement with Association of Information Access Commissioners (AIAC) members to promote Right to Know Day and the importance of open government on Friday 27 September 2019.

An ICON information session held in Canberra on 24 September focused on the role of FOI practitioners in promoting accountability and

transparency. The session was attended by more than 50 officers from various Australian Government departments and agencies.

### ICON information session, Canberra

*"In Australia, we are focusing on promoting greater recognition that information gathered by government is a national resource and subject to appropriate safeguards, should generally be available to the public.*

*I note that Prime Minister Morrison spoke recently of the role of public servants in working for, and being ultimately responsible to, the community. From the OAIC's perspective, making information available is essential to building trust in the community, and you play a vital part in achieving that goal.*

*The flow of information between government and the community can also stimulate innovation to the economic and social advantage of the nation."*

Australian Information Commissioner and Privacy Commissioner Angelene Falk, 24 September 2019.

## Information Access Study 2019

In September 2019, Information Access Commissioners and Ombudsmen released the findings of the first cross-jurisdictional study of Australian community attitudes to access to government-held information. Commissioner Angelene Falk and her counterparts from NSW, Victoria, Queensland, Western Australia and the ACT sponsored the research as part of Australia's *Open Government National Action Plan 2018–20*.

The Information Access Study 2019 measured citizens' awareness of the right to access government information, and their experiences and outcomes in exercising that right. It provided a broad insight into citizens' views and experiences of the right to access information.

Among the key findings in relation to Australian Government agencies:

- 87% were aware of their right to access information held by the government
- 52% felt this right was 'very' important, and 32% felt it was 'quite' important
- more than one-third of respondents had attempted to access information held by an agency during the past 3 years
- 57% had searched for government information through the internet or Google, 45% through an agency website, and 13% through an FOI application
- 83% accessed the information they sought successfully.

The OAIC continues to use the survey results to inform activities to promote and support the right to access information and to enhance understanding of information access issues across government.

## Strategic Priority 4

### Contemporary approach to regulation

The OAIC takes a contemporary approach to our regulatory role in promoting and upholding Australia's privacy and freedom of information laws. This means we engage with, and are responsive to, the community's expectations of its regulatory bodies.

#### Key focus area: Review our regulatory approach

We have conducted a review of our regulatory approach to ensure it aligns with government and public expectations of domestic regulators. We have established a project team dedicated to the Privacy Act review.

#### Indicator 4.1: The OAIC has sufficient statutory powers to detect and deter non-compliance



##### Measure

Powers are enhanced.



##### Target: Qualitatively demonstrated

Not applicable.

In December 2019, the Australian Government announced that it would commence a review of the Privacy Act to ensure it empowers consumers, protects their data and best serves the economy. The review aims to identify areas where consumer privacy protection can be improved and ways to ensure our privacy regime operates effectively. The review by the Attorney-General's Department is expected to commence in the second half of 2020.

We have assembled a project team to examine how the Privacy Act could be amended to enhance the OAIC's statutory powers and strengthen our ability to regulate effectively. We are actively engaging with the Attorney-General's Department regarding potential amendments to the Privacy Act. For more information see Indicator 1.2 on page 29.

#### COVIDSafe system

The OAIC was granted additional powers under the new Part VIIIA of the Privacy Act in relation to the COVIDSafe app. The Privacy Act was amended on 14 May 2020 to provide additional protections for data collected by the COVIDSafe app and held in the National COVIDSafe Data Store. The OAIC has an independent oversight function under the Privacy Act and is actively monitoring and regulating compliance with the COVIDSafe app provisions of the Privacy Act.

The OAIC has powers to conduct audits, investigate complaints, order compensation payments, seek civil penalties against those who breach the law, refer matters to the police or state and territory privacy regulators if appropriate.

## Indicator 4.2: The OAIC is seen to take appropriate regulatory action in relation to breaches of the relevant law

The community expects that the OAIC will take appropriate regulatory action in respect of breaches of the relevant law. The OAIC seeks to ensure that appropriate regulatory action is taken and that regulatory responses are consistent, proportionate, transparent and are evidence and risk-based.



### Measure

Media and stakeholder sentiment.



### Target: Qualitatively demonstrated

Achieved.

Our analysis of media coverage and the results of our stakeholder survey indicate that the OAIC was seen to take appropriate regulatory action in relation to breaches of the relevant law in 2019–20.

Our external media monitoring services recorded approximately 5,600 media mentions of the OAIC during the reporting period.<sup>4</sup> Consistent with the OAIC's strategic priority of being a contemporary regulator, regulatory action or proactive initiatives generated the most media mentions of the OAIC during 2019–20. These included:

- Federal Court Facebook proceedings (which received the most coverage of any OAIC story during 2019–20)
- the privacy protections in the COVIDSafe app and resulting legislation
- the investigation into the Department of Home Affairs' compliance with the FOI Act
- the start of the Consumer Data Right

<sup>4</sup> The OAIC changed media monitoring service providers during 2019–20. Different methodologies were used by each provider to measure media mentions of the OAIC between July to December 2019 and January to June 2020. There was a substantial increase recorded in the second half of the year, although this period included several major proactive stories for the OAIC such as the Facebook court proceedings and the development of the COVIDSafe app.

- coordinated international privacy warning to Libra/Calibra over its privacy protections.

Approximately 50% of articles in which the OAIC appeared, across a range of subjects, were internally rated for sentiment. This analysis indicates almost two-thirds (65%) were 'balanced' in their coverage. 'Negative' and 'trending negative' stories accounted for 3% of coverage, with the remaining 32% rated as 'trending positive' or 'positive'.

In July 2020, the OAIC surveyed key stakeholders on their views of the OAIC's regulatory performance during the 2019–20 reporting period and received 38 responses. More than twice the number of respondents agreed (45%) as disagreed (18%) that the OAIC takes appropriate regulatory action in relation to breaches of the relevant law; 21% neither agreed nor disagreed; and 16% said 'don't know'.

## Media activity and sentiment

The OAIC changed media monitoring suppliers during the reporting period and our analysis averages the different classification methodologies used. The figures exclude mentions on social media.

During the 2019–20 year we also tracked media activity sentiment, rating it against five measures:

- Positive – the OAIC is the focus of the story and is shown to be achieving its objectives in a forthright manner
- Trending positive – the OAIC is mentioned in the story and its achievements are recognised favourably
- Balanced – the OAIC features in the article and both positive and negative aspects are given equal weight, or the mention is without commentary
- Trending negative – the OAIC is mentioned in the story and characterised as, for example, slow moving, ineffectual or without sufficient resources.
- Negative – the OAIC is the focus of the story and regarded negatively.

The OAIC answered 217 media enquiries during 2019–20. For more information see Table 2.10.2 on page 59.

## Stakeholder survey

The OAIC's stakeholder survey in July 2020 found that:<sup>5</sup>

- 68% of stakeholders rated the OAIC's stakeholder engagement with their organisation overall as 'highly' or 'very' effective during 2019–20
- 72% rated the OAIC's performance in working with their organisation to develop online privacy protections as 'highly' or 'very' effective
- 64% said the OAIC was 'highly' or 'very' effective in engaging with their organisation to promote an understanding of obligations under the Privacy Act
- 52% rated the OAIC's performance in working with their organisation to improve access to government information to support public participation and engagement as 'highly' or 'very' effective
- 53% agreed that the OAIC had strong and productive relationships with domestic regulators.

## OAIC networks

The OAIC convenes local networks for privacy and FOI practitioners to engage with us and stay up to date with regulatory developments.

### *Privacy Professionals Network*

The Privacy Professionals Network (PPN) is for public and private sector privacy professionals. Its membership grew during this reporting period from 3,623 to 3,865 members. We sent a monthly newsletter to all PPN members and one targeted alert during the reporting period. We also held a PPN event in partnership with the International Association of Privacy Professionals' Perth KnowledgeNet Chapter, focused on protecting health information.

### *Information Contact Officers Network*

The Information Contact Officers Network (ICON) is for Australian Government FOI practitioners. At the end of this reporting period there were 573 ICON members.

We held one ICON information session during the reporting period to coincide with Right to Know Day 2019. Commissioner Angelene Falk delivered a speech on 24 September 2019 in Canberra about the OAIC's priorities in relation to advancing FOI. A second information session scheduled for April 2020 was postponed due to the COVID-19 pandemic.

<sup>5</sup> Results based on number of responses to each question, excluding respondents who said the question was 'not applicable' to their organisation.

### Indicator 4.3: International regulators actively seek the views of the OAIC in relation to policy development or enforcement activities



#### Measure

Engagement with international regulators.



#### Target: Qualitatively demonstrated

Achieved.

We continued to engage with international regulators in 2019–20 through forums such as the GPA, APPA and the International Conference of Information Commissioners (ICIC).

During the reporting period, the OAIC sought to strengthen existing relationships with other privacy regulators. The OAIC signed 2 MOUs with key international regulators – the United Kingdom’s Information Commissioner’s Office (ICO) and Singapore’s Personal Data Protection Commission.

In addition to international forums, the OAIC engages with a broad range of international stakeholders to promote and uphold privacy, including civil society organisations, the international business community and overseas government organisations. Many nations and regions adopting new privacy laws or creating privacy regulatory regimes seek assistance and information about best practice regulatory approaches from jurisdictions with established laws and frameworks. From time to time, we are also contacted by regulators from jurisdictions with established laws and frameworks seeking our views on specific issues.

The Commissioner was a signatory to a statement on the challenges being faced to address the spread of Coronavirus (COVID-19) by the Executive Committee of the GPA issued on 17 March 2020, and a second statement on achieving privacy by design in contact tracing measures issued on 21 May 2020.

The Commissioner was also a signatory to the statement released by Australian and New Zealand Information Access Commissioners in which they joined with fellow members of the ICIC to recognise and promote sound information management practices as part of Information Awareness Month in May 2020. In particular, the statement calls for the documentation of government decisions and facilitation of security of digital content during the COVID-19 shutdown.

### International networks

The OAIC provides leadership in the global privacy community by serving on the Global Privacy Assembly’s Executive Committee and chairing the Strategic Direction Sub-Committee of the Executive Committee.

The OAIC engages with the Global Privacy Assembly’s International Enforcement Working Group. Through this group, the OAIC has undertaken regulatory enforcement activity.

During 2019–20, the OAIC prepared to initiate a joint investigation with the United Kingdom’s Information Commissioner’s Office into Clearview AI’s use of ‘scraped’ data and biometrics of individuals. The investigation will highlight the importance of enforcement cooperation in protecting the personal information of Australian and UK citizens in a globalised data environment. The joint investigation will be conducted under the Global Privacy Assembly’s Global Cross Border Enforcement Cooperation Arrangement and the MOU between the OAIC and the ICO.

The OAIC also joined with other regulators to sign an open letter to video teleconferencing companies setting out clear expectations of these companies amidst the new and exacerbated privacy risks that can arise given the sharp uptake in use of these services during the pandemic.

For more information see International privacy networks on page 28.

## Indicator 4.4: The OAIC has strong and productive relationships with domestic regulators



### Measure

Regular engagement with other regulators.



### Target: Qualitatively demonstrated

Achieved.

The Information Commissioner is a member of the AIAC and she works with other Commissioners and Ombudsmen to identify trends and issues affecting information access rights in Australia and New Zealand. During 2019–20, AIAC members issued joint statements to mark Right to Know Day (28 September); to emphasise the importance of documenting decisions, preserving records and providing access to information throughout the COVID-19 pandemic; and to highlight the continued importance of transparency during the pandemic.

The OAIC is also a member of Privacy Authorities Australia (PAA) which seeks to increase jurisdictional cooperation and address policy challenges that cross borders or involve complex systems and technologies. The Information Commissioner and OAIC staff attended 2 PAA meetings during 2019–20, including a virtual meeting hosted by the OAIC in June 2020. The OAIC also participated in the PAA Privacy Policy Group and Privacy Complaints and Enforcement Group.

In March 2020, the OAIC convened the COVID-19 National Privacy Team to respond to proposals with national implications, inviting members of PAA to join. PAA members also cooperate in the delivery of PAW campaigns.

The OAIC met regularly with representatives from the ACCC's Digital Platforms team to share

information, to the extent permitted by law, about enforcement matters of mutual interest. The ACCC and the OAIC are co-regulators in relation to the Consumer Data Right. The OAIC worked closely with the ACCC during the reporting period to prepare for the commencement of the Consumer Data Right.

The OAIC also worked with the ACCC, eSafety Commissioner and Australian Cyber Security Centre on the related issues of security, privacy, safety and preventing scams.

## Domestic networks

### *Association of Information Access Commissioners*

The Association of Information Access Commissioners (AIAC) is an Australian and New Zealand network comprising information access authorities who administer FOI legislation. The aim of the network is to exchange information and promote best practice in information access policies and laws.

### *Privacy Authorities Australia*

Privacy Authorities Australia (PAA) is a group of Australian privacy authorities who meet regularly to promote best practice and consistency of privacy policies and laws. We join privacy representatives from all states and territories as a member of PAA.

### *COVID-19 National Privacy Team*

In March 2020, the OAIC established a COVID-19 National Privacy Team to bring domestic regulators together to respond to personal information handling proposals with national implications. The OAIC and the Privacy Commissioners and Ombudsmen of states and territories meet on a regular basis to consider the impacts of the COVID-19 pandemic.



## Key focus area: Internal capability development

In 2019–20, the OAIC implemented strategies to enhance our internal capability in the areas of people, data management and reporting. We provided learning and development opportunities to our people to enhance our technical capabilities. We also undertook initiatives to strengthen our information management practices and internal reporting capabilities.

### Indicator 4.5: Improved employee engagement



#### Measure

Measured through APS Employee Census.



#### Target: Improvement on previous year

Achieved.

Last year's Australian Public Service (APS) Employee Census results revealed that our people felt committed to the OAIC's goals and strongly believed in our organisational purpose and objectives. The employee engagement score in the OAIC's census results remained constant at 72% between 2018 and 2019.

During 2019–20, the OAIC implemented strategies and initiatives to strengthen our employee engagement. A large number of small group workshops were held in late 2019, involving all staff. This enabled us to better understand and explore the outcomes of the APS Employee Census. As a result of the workshops, several staff groups were formed to implement improvements in areas such as internal communications and social engagement.

Other strategies relevant to engagement include an increased focus on role clarity to enable our

people to better understand their responsibilities and the responsibilities of others, and how they contribute to the OAIC's performance as a regulator. We have also worked to leverage technical knowledge and collaboration across the OAIC. We have implemented significant learning and development programs, and health and wellbeing strategies, as well as supporting flexible working conditions.

### Indicator 4.6: Reduced staff turnover rate



#### Measure

Staff turnover rate.



#### Target: In line with APS small agency average

Partially achieved.

In the 2019–20 reporting period, we retained more of our talent and reduced our overall attrition rate from 24% in 2018–19 to 18% in 2019–20. However, our staff turnover rate remains marginally higher than the small agency average (to the end of 2019) which is 15.8%.

Our establishment of an in-house People and Culture function supported a more structured and strategic approach to building a cohesive workforce to deliver our strategic priorities and regulatory functions.

We also implemented a retention initiative to improve internal mobility that includes providing staff with temporary and permanent transfer arrangements between APS agencies to support their professional development. This proved to be beneficial to the organisation in enhancing our collaboration with partner agencies and fulfilling the OAIC's talent management and succession planning strategic initiatives.

### Indicator 4.7: Strong competition for vacancies



#### Measure

Sufficient high-quality applicants for advertised roles.



#### Target: Qualitatively demonstrated

Achieved.

The OAIC's focus on a contemporary regulatory approach has involved redefining our recruitment practices. Throughout 2019–20, the OAIC succeeded in attracting high-calibre staff to advance our purpose and vision. The newly established in-house People and Culture function improved our recruitment processes enabling the OAIC to retain skills and knowledge while usually attracting a reasonable number of suitable candidates for new or vacant roles.

### Indicator 4.8: Internal capability supports the full range of OAIC functions



#### Measure

Approved training courses completed.



#### Target: 75% of approved courses are completed

Achieved.

All courses that were identified through the performance framework and referred to the training area were approved and attended, unless impacted by the COVID-19 pandemic. A revised online learning and development program was well attended.

In 2019–20, the OAIC established a new learning and development program to focus on achieving a longer-term workforce capability strategy. Completion of courses and learning and development sessions was impacted by the significant change in the work environment due to the COVID-19 pandemic. As the OAIC pivoted to working remotely, face-to-face learning was halted, and staff moved to online options to achieve their learning goals.

Responding to the challenges posed by physical distancing requirements, the OAIC redefined its learning and development course offerings, identifying 4 theme areas: developing our leaders, strengthening our regulatory approach, enhancing and implementing positive psychology interventions in the workplace, and developing APS core and foundation skills. We successfully delivered a number of online courses for groups of staff, ensuring a consistent experience and addressing learning and development needs.

The OAIC will continue to deliver broad learning and development programs and identify specific activities for individual staff members, with the overall aim of enhancing business performance and productivity, developing staff capabilities and fostering greater collaboration.



### Indicator 4.9: Data analysis identifies enterprise risks



#### Measure

Reports completed.



#### Target: Qualitatively demonstrated

Achieved.

During the reporting period, the OAIC began a reporting system project to significantly enhance the way we draw insights from data to improve our ability to manage risk. This supports the OAIC in advancing our regulatory priorities and increases our efficiency in addressing community needs when undertaking regulatory action.

This work involved:

- using data to improve risk management by establishing a data analytics and reporting program including regular enterprise-level monitoring of each work function
- centralising data reporting systems and developing real-time reporting to provide clearer insights to help measure our performance against regulatory priorities over time
- implementing a data systems enhancement program to support and mature our data collection practices
- reviewing internal classification of data and information to support more efficient and accurate use and management of data.

We are also maturing our infrastructure through enhancements to data systems.



## Part 3

# Management and accountability

Corporate governance .....	78
External scrutiny .....	81
People and Culture .....	81
Procurement .....	85
Other requirements .....	86

## Corporate governance

Setting strategic direction, implementing effective policies and processes, and monitoring progress are key elements of our corporate governance framework.

### Enabling legislation

The Office of the Australian Information Commissioner (OAIC) was established in November 2010 as an independent statutory agency under the *Australian Information Commissioner Act 2010* (AIC Act). We are responsible for privacy functions conferred by the *Privacy Act 1988* (Privacy Act) and other laws.

We have freedom of information (FOI) functions, including the oversight of the operation of the *Freedom of Information Act 1982* (FOI Act) and review of decisions made by agencies and ministers under that Act.

We are accountable as a non-corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Our annual reporting responsibilities are under s 46 of the PGPA Act and s 30 of the AIC Act. We also have a range of reporting and other responsibilities under legislation generally applicable to Australian Government authorities.

### Portfolio structure and responsible minister

The OAIC is a statutory authority within the Attorney-General's portfolio. The minister responsible is the Hon Christian Porter MP.

### Executive

During this reporting period, our Executive team met weekly and oversaw all aspects of our business covering corporate management and performance, finance, human resources, governance, risk management, external engagement and business planning.

### Risk management

Our risk management framework helped staff to assess risks, make informed decisions and confidently engage with risk.

Our Executive team regularly considered and reviewed the risks the agency faced and the reports on risk were received by the Audit Committee.

The OAIC commenced a comprehensive review of our risk management approach in the 2019–20 financial year, including the development of a revised strategic risk framework and consideration of key risk factors in our domains of responsibility. This work will be expanded in the next reporting period, encompassing the review of our risk policies and procedures and the development of detailed risk profiles for specific areas such as our new regulatory responsibilities in relation to the Consumer Data Right and the COVIDSafe app.

The OAIC has expanded its risk management capability, appointing an Assistant Commissioner – Corporate, and bringing on board senior staff to provide advice and guidance. We have developed our strategic risk profile by focusing on what we must get right to deliver on our strategic priorities. The pillars of our strategic risk profile we have identified are: our people; governance and infrastructure; focus on outcomes; and being community-centric and stakeholder focused.

## Fraud

Our fraud control plan, fraud control policy and guidelines were made available to all staff through internal communications channels.

## Audit Committee

Our Audit Committee assisted the Commissioner to discharge her responsibilities in relation to the OAIC's finances and performance, risk oversight and management, and system of internal control. The Audit Committee oversaw the work of our internal auditors, ensured the annual work program was adhered to and ensured appropriate coverage of our strategic and operational risks. The Audit Committee charter was reviewed in accordance with guidance and the forward work program was aligned to it. Arrangements were made to appoint a new Audit Committee Chairperson and replace an outgoing Audit Committee member early in the 2020–21 financial year. New appointees are appropriately skilled independent people drawn from outside the Australian Public Service.

Through the 2019–20 financial year the Audit Committee was chaired by a member of our Executive team and had 2 independent members. The independent members were employees of the National Disability Insurance Scheme Agency (who resigned in March 2020) and the Australian Human Rights Commission (AHRC). For more information see Table 3.1 over page.

Representatives from the Australian National Audit Office attend meetings of the Audit Committee as observers.

## Corporate services

The OAIC re-signed a memorandum of understanding (MOU) with the AHRC in November 2019. The MOU sets out the provision of some corporate services including financial, information and communications technology and some human resources services. The OAIC also subleases a portion of our premises in Sydney from the AHRC under this arrangement.

For more information on the MOU with the AHRC see Appendix C.

**Table 3.1:** Audit committee

Member name	Qualifications, knowledge, skills or experience (including formal and informal as relevant)	Number of meetings attended	Total annual remuneration \$
Ruth Mackay PSM	Extensive experience within the Australian Public Service Senior Executive Service having held senior governance-related roles at the Civil Aviation Safety Authority. Prior to this Ms Mackay led the implementation of Coalition of Australian Government reforms to Australia's product safety system as the General Manager of Product Safety at the Australian Competition and Consumer Commission. Broad senior executive management experience within the public sector.	3	–
Rachel Holt	Holds the position of Senior Executive, Investigation and Conciliation Service at Australian Human Rights Commission. Broad senior executive management experience within the public sector.	5	–
Donna Hargreaves	Holds the position of Director, Financial Reporting, National Disability Insurance Agency. Broad senior executive management experience within the public sector with a particular focus on financial management.	4	–
Andrew Solomon	Andrew Solomon served as Assistant Commissioner, Dispute Resolution until November 2019, having spent more than a decade at the OAIC and former Office of the Privacy Commissioner. Previously, he was NSW State Manager for the National Native Title Tribunal, and ran the Central Sydney Community Transport Group, a not-for-profit organisation.	2	–

## External scrutiny

During this reporting period, there were no judicial decisions or decisions of administrative tribunals that had a significant impact on our operations.

There were no reports on our operations by the Auditor-General, a parliamentary committee or the Commonwealth Ombudsman.

## People and Culture

The OAIC continued to provide a workplace that offered fulfilling and challenging work, and promoted the professional development of our people. To deliver on our key strategic priorities, we relied on a team of highly skilled and competent staff as the national regulator in both privacy and FOI.

In 2019–20, we continued to build the capacity of existing staff and develop the necessary skill sets to meet the demands for privacy and information management for the Australian public, government agencies and the wider industry.

### Our people

As a small agency in a competitive market, we continued to face challenges in recruiting and retaining skilled people. We used a number of strategies to attract talent including online and social media advertising.

In 2019–20, we established an in-house People and Culture function to support a more structured and strategic approach to building a workforce with the capabilities needed to deliver on our purpose (see Tables 3.2 and 3.3 on page 82).

During this reporting period, we had an average staffing level of 95.4. Our staff turnover was approximately 18% for ongoing staff. This involved 17 ongoing staff resigning, retiring or transferring to other Australian Government agencies. We had 24 ongoing staff join us during 2019–20. As of 30 June 2020, we had 104.8 full-time equivalent (FTE) staff, including ongoing and non-ongoing employees.



**Table 3.2:** Staffing profile as at 30 June 2020

Classification	Male	Female	Full-time	Part-time	Ongoing	Non-ongoing	Total
Statutory Office Holder	–	1	1	–	–	1	<b>1</b>
SES Band 2	–	1	1	–	1	–	<b>1</b>
SES Band 1	2	2	4	–	2	2	<b>4</b>
Executive Level 2 (\$120,356–\$137,355)	3	14	12	5	15	2	<b>17</b>
Executive Level 1 (\$103,618–\$110,840)	14	24	29	9	33	5	<b>38</b>
APS 6 (\$82,219–\$90,539)	8	34	37	5	36	6	<b>42</b>
APS 5 (\$74,563–\$78,827)	6	9	13	2	9	6	<b>15</b>
APS 4 (\$66,881–\$71,064)	2	–	2	–	1	1	<b>2</b>
<b>Total</b>	<b>35</b>	<b>85</b>	<b>99</b>	<b>21</b>	<b>97</b>	<b>23</b>	<b>120</b>

**Table 3.3:** Employment statistics

Employment statistics	
<b>Total staff</b>	<b>120</b>
Full-time	99
Part-time	21
<b>Gender</b>	
Female	85
Male	35
<b>Diversity</b>	
Aboriginal and Torres Strait Islander people	1%
People with disability	4%
People from a non-English speaking background	11%



## Learning and development

We are committed to ongoing learning and development of our staff, recognising the importance of building and developing capabilities to meet current and future needs.

Our work is becoming increasingly technical as the digital environment becomes more complex, and we are also seeing more complex and substantive complaints and investigations in comparison with previous years.

In the *OAIC Corporate Plan 2019–20*, we identified the need to update our workforce capability plan and undertake recruitment and training in areas of emerging technical capability requirements. This internal capability development has been a key focus in our delivery of the plan, and supports our strategic priority of taking a contemporary approach to regulation. The need for a focus on learning and development was also identified through a range of census workshops with OAIC staff.

The OAIC aims to provide a range of learning and development opportunities to staff in line with the Australian Public Service Commission's 70:20:10 model of learning. This model is a key learning and development principle which supports and facilitates learning in the workplace. Through a collaborative approach between employees, managers and human resources, the identification and engagement in development activities allows individuals to capitalise on work-based and relationship-based opportunities. For more information see Indicator 4.5 on page 73.

## Talking about performance

Our Performance Management and Development scheme 'Talking about performance' provided regular and formal assessment of staff members' work performance and identified learning and development needs.

## Professional skills development

Staff undertake specialised training to ensure they are continuously building on their subject-matter expertise and are able to access the latest information from industry and government.

During this reporting period, relevant staff attended specialist training in decision writing, administrative law, conciliation and investigations, auditing skills, leadership and management, plain English, mental health and managing unreasonable complainant conduct.

## Study and professional membership assistance

The OAIC encourages staff to undertake study to develop their knowledge and skills in relevant areas. We supported staff in meeting their learning and development needs by providing study assistance.

## Benefits

We offer our people the following non-salary related benefits:

- flexible working arrangements including home-based work where appropriate
- employee assistance program
- extended purchased leave
- maternity and adoption leave
- parental leave

- leave for compelling personal reasons and exceptional circumstances
- access to paid leave at half pay
- Flextime (APS staff)
- study assistance
- support for professional and personal development
- healthy lifestyle reimbursement
- screen-based eyesight testing and screen-based prescription glasses reimbursements
- influenza vaccinations.

## Workplace relations

During this reporting period, general salary increases were deferred by 6 months across the APS from 14 April 2020, due to the outbreak of coronavirus having a significant impact on workplaces and the economy. The announcement was made by the Assistant Minister to the Prime Minister and Cabinet, who issued a Determination under s 24(3) of the *Public Service Act 1999*. Further salary increases for staff covered under the OAIC's Enterprise Agreement 2016–19 will now occur in November 2020 and May 2021.

In 2019–20, no staff received performance pay. Nine staff had an individual flexibility arrangement in place.

## OAIC Consultation Forum

The OAIC Consultation Forum provides an opportunity for our staff and their representatives to meet and consider issues relating to working at the OAIC.

## Statutory office holder and SES remuneration

The Remuneration Tribunal determined the terms and conditions of our statutory office holder. Remuneration for SES officers is governed by determinations made by the Commissioner under s 24(1) of the *Public Service Act 1999*.

For more information on executive remuneration see Appendix B.

## Workplace diversity

Our Diversity Committee was led by the Assistant Commissioner – Corporate from late 2019 and included representatives from all OAIC branches. The Diversity Committee was responsible for driving our wider diversity strategy and coordinating our obligations under Multicultural Access and Equity Reporting.

## Work health and safety

The AHRC ceased providing the OAIC with advice and resources on work health and safety (WHS) under revised shared services arrangements outlined in the November 2019 MOU.

During the reporting period, the OAIC elected Health and Safety Representatives (HSRs) and took steps to establish an in-house WHS committee. With the outbreak of COVID-19, the OAIC was quick to respond and established a COVID Response Taskforce. The Taskforce included the HSRs and other WHS-trained staff and consulted with staff broadly on a range of WHS issues.

All new staff are provided with WHS information on commencement.

There were no significant incidents reported by staff during this reporting period.

## Procurement

During this reporting period, we complied with the Australian Government's procurement policy framework. We encouraged competition, value for money, transparency and accountability.

All procurement was conducted in line with the Commonwealth Procurement Rules to ensure the efficient, effective, economical and ethical use of Australian Government resources.

During this reporting period, no contracts were exempt from reporting on AusTender on the basis that publishing contract details would disclose exempt matters under the FOI Act. All awarded contracts valued at \$100,000 (GST inclusive) or greater contained standard clauses granting the Auditor-General access to contractors' premises.

This report contains information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.

## Consultants

We engaged consultants where we lacked specialist expertise or when independent research, review or assessment was required.

Typically, we engaged consultants to:

- investigate or diagnose a defined issue or problem
- carry out defined reviews or evaluations
- provide independent advice, information or creative solutions to assist with our decision-making.

During this reporting period, 9 new consultancy contracts were entered into involving total actual expenditure of \$335,260 (excluding GST).

Before we engaged consultants, we took into account the skills and resources required for the task, the skills available internally, and the cost-effectiveness of engaging external expertise. All the decisions relating to consultancy contracts were made in line with the PGPA Act and related regulations, including the Commonwealth Procurement Rules.

## Small business

We supported small business participation in the Commonwealth Government procurement market and engaged with small businesses wherever appropriate during our work. Small and medium enterprises (SME) and small enterprise participation statistics are available on the Department of Finance's website. We also recognised the importance of ensuring that small businesses were paid on time. Our statistics are available in the Survey of Australian Government Payments to Small Business, which is available on the Treasury's website.

## Other requirements

### Advertising and market research

During this reporting period, the OAIC conducted the following advertising campaign:

Paid Facebook promotion of a new consumer resource available on the OAIC website explaining online privacy risks and how to protect personal information online.

During this reporting period, the OAIC conducted the following market research:

The OAIC entered into a contract with Lonergan Research Pty Ltd to conduct the 2020 Australian Community Attitudes to Privacy Survey (a national survey into Australian's attitudes and behaviours around privacy issues) and to produce a report on the results. The total spend in 2019–20 was \$147,140 (GST exclusive). More information on the survey is available on the OAIC website.

### Grant programs

No grant programs took place in 2019–20.

### Memorandums of understanding

We received funding for specific services under a range of MOUs. For more information see Appendix C.

### Disability reporting

The National Disability Strategy 2010–2020 is a national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. The Australian Government is leading the development of a new National Disability Strategy to replace the current National Disability Strategy when it expires at the end of 2020.

### Ecologically sustainable development and environment performance

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires us to report on how our activities accord with the principles of ecologically sustainable development. Our role and activities do not directly link with the principles of ecologically sustainable development or impact on the environment, other than through our business operations regarding the consumption of resources required to sustain our operations. We use energy saving methods in the OAIC's operation and endeavour to make the best use of resources.

### Information Publication Scheme

As required by the FOI Act, we have an Information Publication Scheme entry on our website that provides information on our structure, functions, appointments, annual reports, consultation arrangements, FOI officer, information we routinely release following FOI requests, and information we routinely provide to the Australian Parliament.

## Part 4

# Financial statements

Statement of comprehensive income .....	91
Statement of financial position .....	92
Statement of changes in equity .....	94
Cash flow statement .....	96
Overview .....	98
Financial performance .....	103
Financial position .....	107
Funding .....	115
People and relationships .....	118
Managing uncertainties .....	121
Other information .....	125



## INDEPENDENT AUDITOR'S REPORT

### To the Attorney-General

#### Opinion

In my opinion, the financial statements of the Office of the Australian Information Commissioner (the Entity) for the year ended 30 June 2020:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Entity as at 30 June 2020 and its financial performance and cash flows for the year then ended.

The financial statements of the Entity, which I have audited, comprise the following as at 30 June 2020 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement; and
- Notes to the financial statements, comprising a summary of significant accounting policies and other explanatory information.

#### Basis for opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Entity in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) to the extent that they are not in conflict with the *Auditor-General Act 1997*. I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

#### Accountable Authority's responsibility for the financial statements

As the Accountable Authority of the Entity, the Australian Information Commissioner is responsible under the *Public Governance, Performance and Accountability Act 2013* (the Act) for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under the Act. The Australian Information Commissioner is also responsible for such internal control as the Australian Information Commissioner determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Australian Information Commissioner is responsible for assessing the ability of the Entity to continue as a going concern, taking into account whether the Entity's operations will cease as a result of an administrative restructure or for any other reason. The Australian Information Commissioner is also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.

### Auditor's responsibilities for the audit of the financial statements

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Accountable Authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office



Jodi George

Executive Director

Delegate of the Auditor-General

Canberra

11 September 2020

## STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2020 comply with subsection 42(2) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Office of the Australian Information Commissioner will be able to pay its debts as and when they fall due.



Angelene Falk  
Australian Information Commissioner

10 September 2020



Brenton Attard  
Chief Financial Officer

10 September 2020



## Statement of comprehensive income

for the period ended 30 June 2020

	Notes	2020 \$'000	2019 \$'000	Original budget \$'000
<b>NET COST OF SERVICES</b>				
<b>Expenses</b>				
Employee benefits	1.1A	15,334	12,003	14,627
Suppliers	1.1B	5,763	4,618	6,525
Depreciation and amortisation	2.2A	2,233	464	299
Finance costs	1.1C	24	–	–
<b>Total expenses</b>		<b>23,355</b>	<b>17,085</b>	<b>21,451</b>
<b>Own-Source Income</b>				
<b>Own-source revenue</b>				
Revenue from contracts with customers	1.2A	2,257	2,029	178
Other revenue	1.2B	36	36	–
<b>Total own-source revenue</b>		<b>2,293</b>	<b>2,065</b>	<b>178</b>
<b>Gains</b>				
Other Gains	1.2C	1	–	33
<b>Total gains</b>		<b>1</b>	<b>–</b>	<b>33</b>
<b>Total own-source income</b>		<b>2,293</b>	<b>2,065</b>	<b>211</b>
<b>Net (cost of)/contribution by services</b>		<b>(21,062)</b>	<b>(15,020)</b>	<b>(21,240)</b>
Revenue from government	1.2D	20,941	13,825	20,941
<b>Surplus/(Deficit) attributable to the Australian Government</b>		<b>(121)</b>	<b>(1,195)</b>	<b>(299)</b>
<b>OTHER COMPREHENSIVE INCOME</b>				
<b>Items not subject to subsequent reclassification to net cost of services</b>				
Changes in asset revaluation surplus		35	–	–
<b>Total other comprehensive income</b>		<b>35</b>	<b>–</b>	<b>–</b>

The above statement should be read in conjunction with the accompanying notes.

### Budget variances commentary

The variances primarily relate to the Rendering of Services, Suppliers and Depreciation and amortisation.

Rendering of services variance relates mainly to services provided to a government agency under a memorandum of understanding which was not known at the time of the budget preparation.

The variances in Suppliers and Depreciation and amortisation relates to the transition to AASB 16 Leases, effective 1 July 2019, the budget estimates were updated to reflect this standard in the subsequent budget rounds.

## Statement of financial position

as at 30 June 2020

	Notes	2020 \$'000	2019 \$'000	Original budget \$'000
<b>ASSETS</b>				
<b>Financial assets</b>				
Cash	2.1A	3,590	601	589
Trade and Other Receivables	2.1B	4,406	4,527	4,167
<b>Total financial assets</b>		<b>7,996</b>	5,128	4,756
<b>Non-financial assets<sup>1</sup></b>				
Property Lease	2.2A	1,551	–	–
Infrastructure, Plant and Equipment	2.2A	1,573	643	3,192
Intangibles	2.2A	696	684	594
Other Non-Financial Assets	2.2B	526	483	45
<b>Total non-financial assets</b>		<b>4,347</b>	1,810	3,831
<b>Total assets</b>		<b>12,343</b>	6,938	8,587
<b>LIABILITIES</b>				
<b>Payables</b>				
Suppliers	2.3A	2,656	1,131	884
Other Payables	2.3B	822	1,859	1,860
<b>Total payables</b>		<b>3,478</b>	2,990	2,744
<b>Interest bearing liabilities</b>				
Leases	2.4A	1,615	–	–
<b>Total interest bearing liabilities</b>		<b>1,615</b>	–	–
<b>Provisions</b>				
Employee provisions	4.1A	2,949	2,303	1,749
<b>Total provisions</b>		<b>2,949</b>	2,303	1,749
<b>Total liabilities</b>		<b>8,043</b>	5,293	4,493
<b>Net assets</b>		<b>4,300</b>	1,645	4,094
<b>EQUITY</b>				
Contributed equity		4,873	2,873	4,873
Reserves		208	172	172
Accumulated Results		(782)	(1,400)	(951)
<b>Total equity</b>		<b>4,300</b>	1,645	4,094

The above statement should be read in conjunction with the accompanying notes.

1 Right-of-use assets are included in the property lease line item.

**Budget variances commentary***Assets*

Total assets were higher than budgeted due to increases in the amount of cash held at 30 June and due to the transition to AASB 16 Leases. This favourable cash position is mainly due to a timing difference.

*Liabilities*

Total liabilities were higher than budgeted due to a higher payables balance at 30 June than anticipated and also due to the transition to AASB 16 Leases. Payables are within normal terms and sufficient cash is available to pay them when they fall due in the next reporting period.

*Equity*

Equity is in line with expectations and the variance is due to the net effect of the variances in assets and liabilities.

## Statement of changes in equity

for the period ended 30 June 2020

	2020 \$'000	2019 \$'000	Original budget \$'000
<b>CONTRIBUTED EQUITY</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	2,873	2,013	2,173
<b>Contributions by owners</b>			
Equity injection – Appropriations	2,000	860	2,700
<b>Total transactions with owners</b>	2,000	860	2,700
<b>Closing balance as at 30 June</b>	4,873	2,873	4,873
<b>RETAINED EARNINGS</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	(1,400)	(205)	(652)
Adjustment on initial application of AASB 16	739	–	–
<b>Adjusted opening balance</b>	(660)	(205)	(652)
<b>Comprehensive income</b>			
Surplus/(Deficit) for the period	(121)	(1,195)	(299)
<b>Total comprehensive income</b>	(121)	(1,195)	(299)
<b>Closing balance as at 30 June</b>	(782)	(1,400)	(951)
<b>ASSET REVALUATION RESERVE</b>			
<b>Opening balance</b>			–
Balance carried forward from previous period	173	173	172
<b>Comprehensive income</b>			
Other comprehensive income	35	–	–
<b>Total comprehensive income</b>	35	–	–
<b>Closing balance as at 30 June</b>	208	173	172

	2020 \$'000	2019 \$'000	Original budget \$'000
<b>TOTAL EQUITY</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	1,645	1,981	1,693
Adjustment for changes in accounting policies	739	–	–
<b>Adjusted opening balance</b>	<b>2,384</b>	1,981	1,693
<b>Comprehensive income</b>			
Surplus/(Deficit) for the period	(121)	(1,195)	(299)
Other comprehensive income	35	–	–
<b>Total comprehensive income</b>	<b>(86)</b>	(1,195)	(299)
<b>Transactions with owners</b>			
<b>Contributions by owners</b>			
Equity injection – Appropriations	2,000	860	2,700
<b>Total transactions with owners</b>	<b>2,000</b>	860	2,700
<b>Closing balance as at 30 June</b>	<b>4,300</b>	1,645	4,094

The above statement should be read in conjunction with the accompanying notes.

### Accounting policy

#### *Equity Injections*

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

### Budget variances commentary

Equity is largely in line with budget with the increase resulting from an equity injection through Appropriations.

## Cash flow statement

for the period ended 30 June 2020

	2020 \$'000	2019 \$'000	Original budget \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations	21,270	13,496	20,941
Cash transferred from the Public Account	2,477	4,325	–
Rendering of services	2,111	1,484	178
GST received	1,000	537	250
<b>Total cash received</b>	<b>26,858</b>	<b>19,842</b>	<b>21,369</b>
<b>Cash used</b>			
Employees	(14,555)	(11,459)	(14,627)
Suppliers	(5,020)	(5,853)	(6,144)
Interest payments on lease liabilities	(24)	–	–
Section 74 receipts transferred to OPA	(3,145)	(2,473)	(250)
<b>Total cash used</b>	<b>(22,744)</b>	<b>(19,785)</b>	<b>(21,021)</b>
<b>Net cash from/(used by) operating activities</b>	<b>4,114</b>	<b>57</b>	<b>348</b>
<b>INVESTING ACTIVITIES</b>			
<b>Cash used</b>			
Purchase of infrastructure, plant and equipment	(1,263)	–	(2,719)
Purchase of intangibles	(200)	(205)	–
<b>Total cash used</b>	<b>(1,463)</b>	<b>(205)</b>	<b>(2,719)</b>
<b>Net cash from/(used by) investing activities</b>	<b>(1,463)</b>	<b>(205)</b>	<b>(2,719)</b>

	2020 \$'000	2019 \$'000	Original budget \$'000
<b>FINANCING ACTIVITIES</b>			
<b>Cash received</b>			
Contributed Equity	1,950	160	2,700
<b>Total cash received</b>	<b>1,950</b>	<b>160</b>	<b>2,700</b>
<b>Cash used</b>			
Principal payments of lease liabilities	(1,612)	–	–
<b>Total cash used</b>	<b>(1,612)</b>	<b>–</b>	<b>–</b>
<b>Net cash from/(used by) financing activities</b>	<b>338</b>	<b>160</b>	<b>2,700</b>
<b>Net increase/(decrease) in cash held</b>	<b>2,989</b>	<b>12</b>	<b>329</b>
Cash and cash equivalents at the beginning of the reporting period	601	589	260
<b>Cash and cash equivalents at the end of the reporting period</b>	<b>3,590</b>	<b>601</b>	<b>589</b>

The above statement should be read in conjunction with the accompanying notes.

#### Budget variances commentary

The major variances in the Cash Flow Statement includes cash received and used for operating activities and cash used for investing and financing activities.

During the reporting period the OAIC ensured delivery of its program outcomes which impacted on cash utilisation on operating and investing activities. The transition to AASB 16 Leases impacted on the increase in financing activities and reduction in cash used for payments to suppliers compared to budget.

## Overview

### Objectives of the Office of the Australian Information Commissioner

The Office of the Australian Information Commissioner (OAIC) is an Australian Government controlled entity established under the *Australian Information Commissioner Act 2010*.

The OAIC budgeted for a breakeven result, adjusted for depreciation and amortisation of \$299,000. During the reporting period there were a number of factors which were not anticipated that impacted on the result.

A significant factor was the impact of the COVID-19 pandemic on the progress of some significant initiatives, including the Privacy Legislation Amendment (Enhancing Online Privacy and Enforcement) Bill 2020 and the review of the *Privacy Act 1988*.

A further factor included unbudgeted revenue and expenditure to render services to a government agency and the impact of the first time application of AASB 16 Leases on depreciation and amortisation expense.

The OAIC is structured to meet the following outcome:

Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of Information Commissioner, freedom of information and privacy functions.

The OAIC activities contributing toward this outcome are classified as departmental. Departmental activities involve the use of assets, liabilities, income and expenses controlled or incurred by the OAIC in its own right.

### The basis of preparation

The financial statements are general purpose financial statements and are required by section 42 of the *Public Governance, Performance and Accountability Act 2013*.

The financial statements have been prepared in accordance with:

- a) *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015 (FRR)* for reporting periods ending on or after 1 July 2015; and
- b) Australian Accounting Standards and Interpretations – Reduced Disclosure Requirements issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars.



## New accounting standards

### *Adoption of new Australian accounting standard requirements*

No accounting standard has been adopted earlier than the application date as stated in the standard.

The following new, revised, amending standards and interpretations that were issued prior to the signing of the statement by the accountable authority and chief financial officer, were applicable to the current reporting period and had a material effect on the OAIC's financial statements:

Standard/ Interpretation	Nature of change in accounting policy, transitional provisions, and adjustment to financial statements
AASB 15 <i>Revenue from Contracts with Customers</i> / AASB 2016-8 <i>Amendments to Australian Accounting Standards – Australian Implementation Guidance for Not-for-Profit Entities and AASB 1058 Income of Not-For-Profit Entities</i>	<p>AASB 15, AASB 2016-8 and AASB 1058 became effective 1 July 2019.</p> <p>AASB 15 establishes a comprehensive framework for determining whether, how much and when revenue is recognised. It replaces existing revenue recognition guidance, including AASB 118 <i>Revenue</i>, AASB 111 <i>Construction Contracts</i> and Interpretation 13 <i>Customer Loyalty Programmes</i>. The core principle of AASB 15 is that an entity recognises revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services.</p> <p>AASB 1058 is relevant in circumstances where AASB 15 does not apply. AASB 1058 replaces most of the not-for-profit (NFP) provisions of AASB 1004 <i>Contributions and applies to transactions where the consideration to acquire an asset is significantly less than fair value principally to enable the entity to further its objectives, and where volunteer services are received</i>.</p> <p>The details of the changes in accounting policies, transitional provisions and adjustments are disclosed below and in the relevant notes to the financial statements.</p>
AASB 16 <i>Leases</i>	<p>AASB 16 became effective on 1 July 2019.</p> <p>This new standard has replaced AASB 117 <i>Leases</i>, Interpretation 4 <i>Determining whether an Arrangement contains a Lease</i>, Interpretation 115 <i>Operating Leases – Incentives</i> and Interpretation 127 <i>Evaluating the Substance of Transactions Involving the Legal Form of a Lease</i>.</p> <p>AASB 16 provides a single lessee accounting model, requiring the recognition of assets and liabilities for all leases, together with options to exclude leases where the lease term is 12 months or less, or where the underlying asset is of low value. AASB 16 substantially carries forward the lessor accounting in AASB 117, with the distinction between operating leases and finance leases being retained. The details of the changes in accounting policies, transitional provisions and adjustments are disclosed below and in the relevant notes to the financial statements.</p> <p>The property lease has created a right of use asset and lease liability for the Commission. The Commission only has one lease that meets the criteria of AASB 16 for the recognition as right of use assets and associated liabilities. This has impacted the value of assets and liabilities and increased the depreciation expense.</p>

### *Future Australian accounting standard requirements*

The following new, revised, amending standards and interpretation were issued by the Australian

Accounting Standards Board prior to the signing of the statement by the accountable authority and chief financial officer, which are expected to have a material impact on the OAIC's financial statements for future reporting period(s):

Standard/ Interpretation	Application date for the OAIC	Nature of impending change/s in accounting policy and likely impact on initial application
AASB 2018-7 Amendments to Australian Accounting Standards – Definition of Material	1 July 2020	The amendments to the definition of 'material' clarify that materiality will depend on the nature or magnitude of information or both. An entity will need to assess whether the information, either individually or in combination with other information, is material in the context of the financial statements. AASB 2018-7 aligns the definition of 'material' across AASB 101 Presentation of Financial Statements and AAS 108 Accounting Policies, Changes in Accounting Estimates and Errors and clarify certain aspects of the definition.
AASB 2019-2 Amendments to Australian Accounting Standards – Implementation of AASB 1059	1 July 2020	AASB 2019-2 amends AASB 16 and AASB 1059 primarily to provide a practical expedient to grantors of service concession arrangements so that AASB 16 needs not be applied to assets that would be recognised as service concession assets under AASB 1059. AASB 2019-2 clarifies measurement requirements of the liability of grantors that use the modified retrospective approach upon initial adoption of AASB 1059.
AASB 1059 Service Concession Arrangements: Grantors	1 July 2020	<p>AASB 1059 takes effect from 1 January 2020. It addresses the accounting for a service concession arrangement by a grantor that is a public sector entity. The standard requires a grantor to:</p> <ul style="list-style-type: none"> <li>• Recognise a service concession asset constructed, developed or acquired from a third party by the operator, including an upgrade to an existing asset of the grantor when the grantor controls the asset.</li> <li>• Reclassify an existing asset as a service concession asset when it meets the criteria for recognition as a service concession asset.</li> <li>• Initially measure a service concession asset at current replacement cost in accordance with the cost approach to fair value in AASB 13 and subsequent to the initial recognition or reclassification of the asset, the service concession asset is accounted for in accordance with AASB 116 or AASB 138.</li> <li>• Recognise a corresponding liability measured initially at the fair value of the service concession asset, adjusted for any other consideration between the grantor and the operator, using either the financial liability model or the grant of a right to the operator model or both.</li> </ul> <p>The new standard will have no impact on the OAIC.</p>
AASB 1060 General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities	1 July 2020	<p>AASB 1060 is the new simplified disclosure standard developed by the AASB based on IFRS for Small and Medium-sized Entities. It requires Tier 2 entities to follow the recognition and measurement requirements under Australian Accounting Standards but to apply the simplified disclosure requirements in AASB 1060. This standard will only apply to disclosures.</p> <p>Finance has yet to analyse the possible impact of this standard on entity financial statements.</p>

### *Application of AASB 15 Revenue from Contracts with Customers / AASB 1058 Income of Not-For-Profit Entities*

The OAIC adopted AASB 15 and AASB 1058 using the modified retrospective approach, under which the cumulative effect of initial application is recognised in retained earnings at 1 July 2019. Accordingly, the comparative information presented for 2019 is not restated, that is, it is presented as previously reported under the various applicable AASBs and related interpretations.

Under the new income recognition model the OAIC shall first determine whether an enforceable agreement exists and whether the promises to transfer goods or services to the customer are 'sufficiently specific'. If an enforceable agreement exists and the promises are 'sufficiently specific' (to a transaction or part of a transaction), the OAIC applies the general AASB 15 principles to determine the appropriate revenue recognition. If these criteria are not met, the Entity shall consider whether AASB 1058 applies.

In relation to AASB 15, the OAIC elected to apply the new standard to all new and uncompleted contracts from the date of initial application. The OAIC is required to aggregate the effect of all of the contract modifications that occur before the date of initial application.

In terms of AASB 1058, the OAIC is required to recognise volunteer services at fair value if those services would have been purchased if not provided voluntarily, and the fair value of those services can be measured reliably.

### *Application of AASB 16 Leases*

The OAIC adopted AASB 16 using the modified retrospective approach, under which the cumulative effect of initial application is recognised in retained earnings at 1 July 2019. Accordingly, the comparative information presented for 2019 is not restated, that is, it is presented as previously reported under AASB 117 and related interpretations.

The OAIC elected to apply the practical expedient to not reassess whether a contract is, or contains a lease at the date of initial application. Contracts entered into before the transition date that were not identified as leases under AASB 117 were not reassessed. The definition of a lease under AASB 16 was applied only to contracts entered into or changed on or after 1 July 2019.

AASB 16 provides for certain optional practical expedients, including those related to the initial adoption of the standard. The OAIC applied the following practical expedients when applying AASB 16 to leases previously classified as operating leases under AASB 117:

- Apply a single discount rate to a portfolio of leases with reasonably similar characteristics;
- Exclude initial direct costs from the measurement of right-of-use assets at the date of initial application for leases where the right-of-use asset was determined as if AASB 16 had been applied since the commencement date;
- Reliance on previous assessments on whether leases are onerous as opposed to preparing an impairment review under AASB 136 Impairment of assets as at the date of initial application; and
- Applied the exemption not to recognise right-of-use assets and liabilities for leases with less than 12 months of lease term remaining as of the date of initial application.

As a lessee, the OAIC previously classified leases as operating or finance leases based on its assessment of whether the lease transferred substantially all of the risks and rewards of ownership. Under AASB 16, the OAIC recognises right-of-use assets and lease liabilities for most leases. However, OAIC has elected not to recognise right-of-use assets and lease liabilities for some leases of low value assets based on the value of the underlying asset when new or for short-term leases with a lease term of 12 months or less.

On adoption of AASB 16, the OAIC recognised right-of-use assets and lease liabilities in relation to leases of office space which had previously been classified as operating leases.

The lease liabilities were measured at the present value of the remaining lease payments, discounted using the OAIC's incremental borrowing rate as at 1 July 2019. The OAIC's incremental borrowing rate is the rate at which a similar borrowing could be obtained from an independent creditor under comparable terms and conditions. The weighted average rate applied was 1.08%.

The right-of-use assets were measured as follows:

- a) Office space: measured at an amount equal to the lease liability, adjusted by the amount of any prepaid or accrued lease payments.
- b) All other leases: the carrying value that would have resulted from AASB 16 being applied from the commencement date of the leases, subject to the practical expedients noted above.

### Impact on transition

On transition to AASB 16, the OAIC recognised additional right-of-use assets and additional lease liabilities, recognising the difference in retained earnings. The impact on transition is summarised below:

	1 July 2019 \$'000
Departmental	
Right-of-use assets – Property Lease	3,227
Lease liabilities	3,227
Retained earnings	739

The following table reconciles the Departmental minimum lease commitments disclosed in the OAIC's 30 June 2019 annual financial statements to the amount of lease liabilities recognised on 1 July 2019:

	1 July 2019 \$'000
Minimum operating lease commitment at 30 June 2019	4,357
Less: short-term leases not recognised under AASB 16	(115)
Less: low value leases not recognised under AASB 16	(121)
<b>Undiscounted lease payments</b>	<b>4,121</b>
Less: effect of discounting using the incremental borrowing rate as at the date of initial application	0
Less: Operating lease not commencing by 1 July 2019	(1,582)
Less: Other operating lease expenses included as part of commitments	(761)
<b>Lease liabilities recognised at 1 July 2019</b>	<b>1,778</b>

### Taxation

The OAIC is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

### Events after the reporting period

There are no known events after the reporting period that could have a material impact on the financial statements.

## Financial performance

This section analyses the financial performance of Office of the Australian Information Commission for the year ended 2020.

### 1.1: Expenses

	2020 \$'000	2019 \$'000
<b>1.1A: Employee benefits</b>		
Wages and salaries	11,958	8,856
Superannuation		
Defined contribution plans	1,292	1,060
Defined benefit plans	436	918
Leave and other entitlements	1,293	1,123
Separation and redundancies	306	–
Other employee expenses	49	45
<b>Total employee benefits</b>	<b>15,334</b>	<b>12,003</b>

#### Accounting policy

Accounting policies for employee related expenses is contained in the People and relationships section.

	2020 \$'000	2019 \$'000
<b>1.1B: Suppliers</b>		
<b>Goods and services supplied or rendered</b>		
Insurance	22	23
Office consumables	64	47
Official travel	203	288
Printing and publications	51	22
Professional services and fees	3,425	2,858
Property Outgoing	415	292
Reference materials, subscriptions and licenses	252	147
Staff training	190	107
Telecommunications	56	31
Other	269	175
<b>Total goods and services supplied or rendered</b>	<b>4,948</b>	<b>3,990</b>
Goods supplied	367	216
Services rendered	4,581	3,774
<b>Total goods and services supplied or rendered</b>	<b>4,948</b>	<b>3,990</b>
<b>Other suppliers</b>		
Workers compensation expenses	35	25
Operating lease rentals in connection with Related parties		
Subleases	–	603
Short-term leases	667	–
Low value leases	113	–
<b>Total other suppliers</b>	<b>815</b>	<b>628</b>
<b>Total suppliers</b>	<b>5,763</b>	<b>4,618</b>

The OAIC has short-term lease commitments of \$0.056m as at 30 June 2020.

#### Accounting policy

##### *Short-term leases and leases of low-value assets*

The OAIC has elected not to recognise right-of-use assets and lease liabilities for short-term leases of assets that have a lease term of 12 months or less and leases of low-value assets (less than \$10,000). The entity recognises the lease payments associated with these leases as an expense on a straight-line basis over the lease term.

	2020 \$'000	2019 \$'000
<b>1.1C: Finance costs</b>		
Interest on property lease liabilities	24	–
<b>Total finance costs</b>	<b>24</b>	<b>–</b>

#### Accounting policy

All borrowing costs are expensed as incurred.

## 1.2: Own-source revenue and gains

	2020 \$'000	2019 \$'000
<b>Own-source revenue</b>		
<b>1.2A: Revenue from contracts with customers</b>		
Rendering of services	2,257	2,029
<b>Total revenue from contracts with customers</b>	<b>2,257</b>	<b>2,029</b>
<b>Disaggregation of revenue from contracts with customers</b>		
Major product / service line:		
Regulatory services	2,257	2,029
	<b>2,257</b>	<b>2,029</b>
Type of customer:		
Australian Government entities (related parties)	2,079	1,785
State and Territory Governments	178	244
	<b>2,257</b>	<b>2,029</b>
Timing of transfer of goods and services:		
Over time	2,257	2,029
	<b>2,257</b>	<b>2,029</b>

### Accounting policy

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction. Receivables for goods and services, which have 30-day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

	2020 \$'000	2019 \$'000
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**1.2B: Other revenue**

Resources received free of charge

Remuneration of auditors	36	36
<b>Total other revenue</b>	<b>36</b>	<b>36</b>

**Accounting policy***Resources received free of charge*

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

	2020 \$'000	2019 \$'000
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**Gains****1.2C: Other gains**

Sale of assets	1	–
<b>Total other gains</b>	<b>1</b>	<b>–</b>

**Accounting policy***Sale of assets*

Gains from disposal of assets are recognised when control of the asset has passed to the buyer.

	2020 \$'000	2019 \$'000
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**1.2D: Revenue from Government**

Appropriations

Departmental appropriations	20,941	13,825
<b>Total revenue from Government</b>	<b>20,941</b>	<b>13,825</b>

**Accounting policy***Revenue from Government*

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the entity gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.



## Financial position

This section analyses the Office of the Australian Information Commissioner's assets used to conduct its operations and the operating liabilities incurred as a result.

Employee related information is disclosed in the People and relationships section.

### 2.1: Financial assets

	2020 \$'000	2019 \$'000
<b>2.1A: Cash</b>		
Cash on hand and at bank	3,590	601
<b>Total cash and cash equivalents</b>	<b>3,590</b>	<b>601</b>

#### Accounting policy

Cash is recognised at its nominal amount. Cash and cash equivalents includes cash on hand.

	2020 \$'000	2019 \$'000
<b>2.1B: Trade and other receivables</b>		
<b>Goods and services receivables</b>		
Goods and services	163	698
<b>Total goods and services receivables</b>	<b>163</b>	<b>698</b>
<b>Appropriations receivables</b>		
Appropriation receivable	4,126	3,736
<b>Total appropriations receivables</b>	<b>4,126</b>	<b>3,736</b>
<b>Other receivables</b>		
GST Receivable from the Australian Taxation Office	117	92
<b>Total other receivables</b>	<b>117</b>	<b>92</b>
<b>Total trade and other receivables (gross)</b>	<b>4,406</b>	<b>4,526</b>
<b>Less impairment loss allowance</b>	<b>-</b>	<b>-</b>
<b>Total trade and other receivables (net)</b>	<b>4,406</b>	<b>4,526</b>
<b>Trade and other receivables (net) expected to be recovered</b>		
No more than 12 months	4,406	4,526
<b>Total trade and other receivables (net)</b>	<b>4,406</b>	<b>4,526</b>

#### Accounting policy

##### Receivables

Receivables are measured at amortised cost using the effective interest method less impairment.

## 2.2: Non-financial assets

### 2.2A: Reconciliation of the opening and closing balances of property lease, infrastructure, plant and equipment and intangibles

#### Reconciliation of the opening and closing balances of property lease, infrastructure, plant and equipment and intangibles 2020

	Property Lease \$'000	Leashold Improvements \$'000	Leashold Improvements – Work in Progress \$'000	Computer, Plant and Equipment \$'000	Intangibles \$'000	Intangibles – Work in Progress \$'000	Total \$'000
<b>As at 1 July 2019</b>							
Gross book value	–	953	–	23	2,987	–	3,963
Accumulated depreciation, amortisation and impairment	–	(318)	–	(15)	(2,303)	–	(2,636)
<b>Total as at 1 July 2019</b>	–	635	–	8	684	–	1,327
Recognition of right of use asset on initial application of AASB 16	3,227	–	–	–	–	–	3,227
<b>Adjusted total as at 1 July 2019</b>	3,227	635	–	8	684	–	4,554
Additions		1,189	42	33	43	158	1,465
Revaluations and impairments recognised in other comprehensive income	–	31	–	4	–	–	35
Depreciation and amortisation	–	(357)	–	(12)	(189)	–	(558)
Depreciation on right-of-use assets	(1,676)	–	–	–	–	–	(1,676)
Disposals			–				–
<b>Total as at 30 June 2020</b>	1,551	1,498	42	33	538	158	3,821

	Property Lease \$'000	Leashold Improvements \$'000	Leashold Improvements – Work in Progress \$'000	Computer, Plant and Equipment \$'000	Intangibles \$'000	Intangibles – Work in Progress \$'000	Total \$'000
<b>Total as at 30 June 2020 represented by</b>							
Gross book value	3,227	1,498	42	33	3,030	158	7,988
Accumulated depreciation, amortisation and impairment	(1,676)	–	–	–	(2,492)	–	(4,167)
<b>Total as at 30 June 2020</b>	<b>1,551</b>	<b>1,498</b>	<b>42</b>	<b>33</b>	<b>538</b>	<b>158</b>	<b>3,821</b>
Carrying amount of right-of-use assets	1,551	–	–	–	–	–	1,551

No indicators of impairment were found for infrastructure, plant and equipment and intangibles.

No infrastructure, plant and equipment and intangibles are expected to be sold or disposed of within the next 12 months.

#### Revaluations of non-financial assets

All revaluations were conducted in accordance with the revaluation policy stated at Note 2.2. On 30 June 2020, an independent valuer conducted the revaluations.

Reconciliation of the opening and closing balances of infrastructure, plant and equipment and intangibles for 2019

	Property Lease \$'000	Leashold Improvements \$'000	Computer, Plant and Equipment \$'000	Intangibles \$'000	Intangibles – Work in Progress \$'000	Total \$'000
As at 1 July 2018						
Gross book value	–	953	24	2,782	–	3,759
Accumulated depreciation, amortisation and impairment	–	–	–	(2,172)	–	(2,172)
Total as at 1 July 2018	–	953	24	610	–	1,587
Additions	–	–	–	205	–	205
Depreciation and amortisation	–	(318)	(15)	(131)	–	(464)
Disposals			(1)			(1)
Total as at 30 June 2019	–	635	8	684	–	1,327
Total as at 30 June 2019 represented by						
Gross book value	–	953	23	2,987	–	3,963
Accumulated depreciation, amortisation and impairment	–	(318)	(15)	(2,303)	–	(2,636)
Total as at 30 June 2019	–	635	8	684	–	1,327

### Accounting policy

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor's accounts immediately prior to the restructuring.

#### *Asset recognition threshold*

Purchases of property, plant and equipment are recognised initially at cost in the statement of financial position, except for purchases costing less than \$5,000 which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions in property leases taken up by the entity where there exists an obligation to restore the property to its original condition. These costs are included in the value of leasehold improvements with a corresponding provision for the 'make good' recognised.

#### *Lease Right of Use (ROU) assets*

Leased ROU assets are capitalised at the commencement date of the lease and comprise of the initial lease liability amount, initial direct costs incurred when entering into the lease less any lease incentives received. These assets are accounted for by Commonwealth lessees as separate asset classes to corresponding assets owned outright, but included in the same column as where the corresponding underlying assets would be presented if they were owned.

On initial adoption of AASB 16 the OAIC has adjusted the ROU assets at the date of initial application by the amount of any provision for onerous leases recognised immediately before the date of initial application. Following initial application, an impairment review is undertaken for any right of use lease asset that shows indicators of impairment and an impairment loss is recognised against any right of use lease asset that is impaired. Lease ROU assets continue to be measured at cost after initial recognition in Commonwealth agency, GGS and Whole of Government financial statements.

#### *Revaluations*

Following initial recognition at cost, property, plant and equipment (**excluding ROU assets**) are carried at fair value (or an amount not materially different from fair value) less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit.

Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

### *Depreciation*

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the entity using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2020	2019
Leasehold improvements	Lease term	Lease term
Computer, plant and equipment	4 to 10 years	4 to 10 years

The depreciation rates for ROU assets are based on the commencement date to the earlier of the end of the useful life of the ROU asset or the end of the lease term.

### *Impairment*

All assets were assessed for impairment at 30 June 2019. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the entity were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

### *Derecognition*

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

### *Intangibles*

The entity's intangibles comprise internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the Commission's software are 2 to 5 years (2019: 2 to 5 years years).

All software assets were assessed for indications of impairment as at 30 June 2020.

### **Accounting judgements and estimates**

The fair value of infrastructure, plant and equipment has been taken to be the market value of similar assets as determined by an independent valuer.

	2020 \$'000	2019 \$'000
<b>2.2B: Other non-financial assets</b>		
Prepayments	526	483
<b>Total other non-financial assets</b>	<b>526</b>	<b>483</b>
<b>Other non-financial assets expected to be recovered</b>		
No more than 12 months	526	483
<b>Total other non-financial assets</b>	<b>526</b>	<b>483</b>

No indicators of impairment were found for other non-financial assets.

## 2.3: Payables

	2020 \$'000	2019 \$'000
<b>2.3A: Suppliers</b>		
Trade creditors and accruals	2,656	880
Rent Payable	-	251
<b>Total suppliers</b>	<b>2,656</b>	<b>1,131</b>
<b>Suppliers expected to be settled</b>		
No more than 12 months	2,656	943
More than 12 months	-	188
<b>Total suppliers</b>	<b>2,656</b>	<b>1,131</b>

Settlement is generally made in accordance with the terms of the supplier invoice.

	2020 \$'000	2019 \$'000
<b>2.3B: Other payables</b>		
Salaries and wages	170	61
Superannuation	30	12
Other employee expenses	6	-
Revenue received in advance	616	1,298
Lease incentives	-	488
<b>Total other payables</b>	<b>822</b>	<b>1,859</b>
<b>Other payables to be settled</b>		
No more than 12 months	822	1,859
<b>Total other payables</b>	<b>822</b>	<b>1,859</b>

## 2.4: Interest bearing liabilities

	2020 \$'000	2019 \$'000
<b>2.4A: Leases</b>		
Property lease liabilities	1,615	–
<b>Total leases</b>	1,615	–

Total cash outflow for property leases for the year ended 30 June 2020 was \$1,636m.

### Accounting policy

Refer Overview section for accounting policy on leases.



Funding

This section identifies the Office of the Australian Information Commissioner’s funding structure.

3.1: Appropriations

3.1A: Annual appropriations ('recoverable GST exclusive')

Annual appropriations for 2020

Departmental	Annual Appropriation <sup>1</sup> \$'000	Adjustments to appropriation <sup>2</sup> \$'000	Total appropriation \$'000	Appropriation applied in 2020 (current and prior years) \$'000	Variance <sup>3</sup> \$'000
Ordinary annual services	21,270	3,589	24,859	(20,037)	4,822
Other services					
Equity Injections	2,000	-	2,000	(1,250)	750
Total departmental	23,270	3,589	26,859	(21,287)	5,572

1 Adjustments including for PGPA Act Section 74 receipts.

2 Variance represents the application of current and previous years appropriation and own-source revenue.

Annual appropriations for 2019

	Annual Appropriation \$'000	Adjustments to appropriation <sup>1</sup> \$'000	Total appropriation \$'000	Appropriation applied in 2019 \$'000	Variance <sup>2</sup> \$'000
<b>Departmental</b>					
Ordinary annual services	13,496	552	14,048	(16,931)	(2,883)
Other services					
Equity Injections	860	–	860	(160)	700
<b>Total departmental</b>	<b>14,356</b>	<b>552</b>	<b>14,908</b>	<b>(17,091)</b>	<b>(2,183)</b>

1 Adjustments including for PGPA Act Section 74 receipts.

2 Variance represents the application of current and previous years appropriation and own-source revenue.

3.1B: Unspent annual appropriations ('recoverable GST exclusive')

	2020 \$'000	2019 \$'000
<b>Departmental</b>		
Appropriation Act (No. 1) 2018–19	–	3,074
Appropriation Act (No. 2) 2018–19	–	700
Appropriation Act (No. 1) 2019–20	<b>5,074</b>	–
Supply Act ( No.1) 2019–20	<b>601</b>	–
Appropriation Act (No. 2) 2019–20	<b>750</b>	–
<b>Total departmental</b>	<b>6,425</b>	<b>3,774</b>

### 3.2: Net cash appropriation arrangements

	2020 \$'000	2019 \$'000
<b>Total comprehensive income/(loss) less depreciation/amortisation expenses previously funded through revenue appropriations</b>	<b>472</b>	<b>(731)</b>
Plus: depreciation/amortisation expenses previously funded through revenue appropriation	(558)	(464)
Plus: depreciation right-of-use assets	(1,676)	–
Less: principal repayments – leased assets	1,612	–
<b>Total comprehensive income/(loss) – as per the Statement of Comprehensive Income</b>	<b>(150)</b>	<b>(1,195)</b>
<b>Total comprehensive income – as per the Statement of Comprehensive Income</b>	<b>(150)</b>	<b>(1,195)</b>

## People and relationships

This section describes a range of employment and post employment benefits provided to our people and our relationships with other key people.

### 4.1: Employee provisions

	2020 \$'000	2019 \$'000
<b>4.1A: Employee provisions</b>		
Leave	2,949	2,303
<b>Total employee provisions</b>	<b>2,949</b>	<b>2,303</b>
<b>Employee provisions expected to be settled</b>		
No more than 12 months	2,257	1,765
More than 12 months	692	538
<b>Total employee provisions</b>	<b>2,949</b>	<b>2,303</b>

#### Accounting policy

Liabilities for short-term employee benefits and termination benefits expected within twelve months of the end of reporting period are measured at their nominal amounts.

##### *Leave*

The liability for employee benefits includes provision for annual leave and long service leave. The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the OAIC's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the work of an actuary performed for the Department of Finance (DoF) and summarised in the Standard Parameters for use in 2019–20 Financial Statements published on the DoF website. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

##### *Separation and redundancy*

Provision is made for separation and redundancy benefit payments. The entity recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

Superannuation

The OAIC’s staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), or the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian Government.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in DoF’s schedules and notes.

The OAIC makes employer contributions to the employees’ defined benefit superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The OAIC accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the financial year.

Accounting judgements and estimates

The long service leave has been estimated in accordance with the FRR taking into account expected salary growth, attrition and future discounting using the government bond rate.

4.2: Key management and personnel remuneration

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the Commission. The OAIC has determined the key management personnel to be the Information Commissioner and Deputy Information Commissioner.

	2020 \$'000	2019 \$'000
Short-term employee benefits	724	879
Post-employment benefits	84	101
Other long-term employee benefits	22	25
Termination benefits	-	-
<b>Total key management personnel remuneration expenses<sup>1</sup></b>	<b>830</b>	<b>1,005</b>

The total number of key management personnel that are included in the above table are 2 (2019: 4).

1 The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister’s remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the entity.

### 4.3: Related party disclosures

#### Related party relationships

The OAIC is an Australian Government controlled entity. Related parties to this entity are Key Management Personnel including the Portfolio Minister and Cabinet and Executive, and other Australian Government entities.

#### Transactions with related parties

Given the breadth of Government activities, related parties may transact with the government sector in the same capacity as ordinary citizens. Such transactions include the payment or refund of taxes, receipt of a Medicare rebate or higher education loans. These transactions have not been separately disclosed in this note.

The following transactions with related parties occurred during the financial year:

Significant transactions with related parties can include:

- the payments of grants or loans
- purchases of goods and services
- asset purchases, sales transfers or leases
- debts forgiven, and
- guarantees.

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the entity, it has been determined that there are no related party transactions to be separately disclosed.

Disclosure of transactions with related parties is required to include comparatives (AASB 124.32 and AASB 101).

## Managing uncertainties

This section analyses how the Office of the Australian Information Commissioner manages financial risks within its operating environment.

### 5.1: Contingent assets and liabilities

#### Quantifiable contingencies

At the time signing these financial statements, the OAIC had no quantifiable contingent liabilities.

#### Unquantifiable contingencies

As at 30 June 2020 the Australian Information Commissioner (AIC) was a respondent to 2 matters in the Federal Court of Australia (FCA) and a respondent in 2 matters in the Federal Circuit Court (FCC).

Three matters before the federal courts in which the AIC was a respondent are *Administrative Decisions (Judicial Review) Act 1977* (ADJR) reviews of

decisions to finalise privacy complaints and 1 matter is a civil penalty proceedings under the Privacy Act 1988 (Privacy Act).

Although the federal courts may award costs, the AIC's exposure to a costs order is highly unlikely in all matters, based on current legal advice. It is not possible to estimate the amounts of payment(s) that may be required in relation to the matters where a costs order may materialise at the conclusion of the matter.

The AIC is also a respondent to 2 matters in the Administrative Appeals Tribunal, one (1) of which is in relation to a direction given by the AIC under section 26WQ of the *Privacy Act 1988* and 1 of which was in relation to a declaration made by the AIC under s 89K of the *Freedom of Information Act 1982*. However, as the Tribunal is a 'no costs' jurisdiction consideration of contingent liabilities is not necessary in these matters.

#### Accounting policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

## 5.2: Financial instruments

	2020 \$'000	2019 \$'000
<b>5.2A: Categories of financial instruments</b>		
<b>Financial assets at amortised cost</b>		
Cash on hand and at bank	3,590	601
Trade and other receivables	163	698
<b>Total financial assets at amortised cost</b>	<b>3,753</b>	1,299
<b>Total financial assets</b>	<b>3,753</b>	1,299
<b>Financial Liabilities</b>		
<b>Financial liabilities measured at amortised cost</b>		
Trade creditors and accruals	2,656	1,131
<b>Total financial liabilities measured at amortised cost</b>	<b>2,656</b>	1,131
<b>Total financial liabilities</b>	<b>2,656</b>	1,131

### Accounting policy

#### **Financial assets**

With the implementation of AASB 9 *Financial Instruments* for the first time in 2019, the entity classifies its financial assets in the following categories:

- a) financial assets at fair value through profit or loss;
- b) financial assets at fair value through other comprehensive income; and
- c) financial assets measured at amortised cost.

The classification depends on both the entity's business model for managing the financial assets and contractual cash flow characteristics at the time of initial recognition. Financial assets are recognised when the entity becomes a party to the contract and, as a consequence, has a legal right to receive or a legal obligation to pay cash and derecognised when the contractual rights to the cash flows from the financial asset expire or are transferred upon trade date.

Comparatives have not been restated on initial application.

#### *Financial assets at amortised cost*

Financial assets included in this category need to meet two criteria:

1. the financial asset is held in order to collect the contractual cash flows; and
2. the cash flows are solely payments of principal and interest (SPPI) on the principal outstanding amount.

Amortised cost is determined using the effective interest method.



*Effective interest method*

Income is recognised on an effective interest rate basis for financial assets that are recognised at amortised cost.

*Impairment of financial assets*

Financial assets are assessed for impairment at the end of each reporting period based on Expected Credit Losses, using the general approach which measures the loss allowance based on an amount equal to *lifetime expected credit losses* where risk has significantly increased, or an amount equal to *12-month expected credit losses* if risk has not increased.

The simplified approach for trade, contract and lease receivables is used. This approach always measures the loss allowance as the amount equal to the lifetime expected credit losses.

A write-off constitutes a derecognition event where the write-off directly reduces the gross carrying amount of the financial asset.

**Financial liabilities**

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities. Financial liabilities are recognised and derecognised upon 'trade date'.

*Financial liabilities at amortised cost*

Financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs. These liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective interest basis.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

### 5.3: Fair value measurement

The following table provides an analysis of assets and liabilities that are measured at fair value. The remaining assets and liabilities disclosed in the statement of financial position do not apply the fair value hierarchy.

The different levels of the fair value hierarchy are defined below.

Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities that the entity can access at measurement date.

Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3: Unobservable inputs for the asset or liability.

#### Accounting policy

The OAIC considers the fair value hierarchy levels at the end of the reporting period. There were no transfers in or out of any levels during the reporting period.

#### 5.1A: Fair value measurement

Fair value measurements at the end of the reporting period				
	2020 \$'000	2019 \$'000	Category (Level 1, 2 or 3)	Valuation Technique(s) and Inputs Used
<b>Non-financial assets<sup>1</sup></b>				
Infrastructure, plant and equipment	1,573	643	2	Market approach. Market replacement cost less estimate of written down value of asset used.

1 There was no non-financial asset where the highest and best use differed from its current use during the reporting period.

## Other information

### 6.1: Aggregate assets and liabilities

#### 6.1A: Aggregate assets and liabilities

	2020 \$'000	2019 \$'000
<b>Assets expected to be recovered in:</b>		
No more than 12 months	4,932	5,010
<b>Total assets</b>	<b>4,932</b>	<b>5,010</b>
<b>Liabilities expected to be settled in:</b>		
No more than 12 months	2,437	3,378
More than 12 months	692	784
<b>Total liabilities</b>	<b>3,129</b>	<b>4,162</b>



## Part 5

# Appendices

Appendix A: Agency resource statement and resources for outcomes .....	128
Appendix B: Executive remuneration.....	130
Appendix C: Memorandums of understanding.....	132
Appendix D: Privacy statistics .....	134
Appendix E: FOI statistics .....	138
Appendix F: Acronyms and abbreviations.....	162
Appendix G: Correction of material errors .....	165
Appendix H: List of requirements.....	166

## Appendix A: Agency resource statement and resources for outcomes

**Table A.1:** OAIC resource statement 2019–20

	Actual available appropriation for 2019–20 \$'000 (a)	Payments made 2019–20 \$'000 (b)	Balance remaining for 2019–20 \$'000 (a) – (b)
Ordinary annual services*			
Departmental appropriation	23,527	17,852	5,675
<b>Total</b>	<b>23,527</b>	<b>17,852</b>	<b>5,675</b>
Administered expenses			
<b>Total ordinary annual services</b> <b>A</b>	<b>23,527</b>	<b>17,852</b>	
Other services			
Administered expenses	–	–	
Departmental non-operating	–	–	
Equity injections†	2,000	1,250	750
Administered non-operating			
<b>Total other services</b> <b>B</b>	<b>2,000</b>	<b>1,250</b>	<b>750</b>
<b>Total available annual appropriations and payments</b>	<b>25,527</b>	<b>19,102</b>	<b>6,425</b>
Special appropriations	–	–	
<b>Total special appropriations</b> <b>C</b>			
Special accounts	–	–	
<b>Total special accounts</b> <b>D</b>	–	–	
Total resourcing and payments A + B + C + D	<b>25,527</b>	<b>19,102</b>	
Less appropriations drawn from annual or special appropriations above and credited to special accounts	–	–	
And/or payments to corporate entities through annual appropriations	–	–	
<b>Total net resourcing and payments for the OAIC</b>	<b>25,527</b>	<b>19,102</b>	

### Note

All figures are GST exclusive.

\* *Appropriation Act (No. 1) 2019–2020*. Includes *Public Governance, Performance and Accountability Act 2013* (PGPA Act 2013) and s 74 retained revenue receipts.

† *Appropriation Act (No. 2) 2019–2020*.

**Table A.2:** OAIC resource statement 2019–20

	Budget 2019–20 \$'000 (a)	Actual expenses 2019–20 \$'000 (b)	Variation 2019–20 \$'000 (a) – (b)
<b>Outcome 1</b>			
Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of Information Commissioner, freedom of information and privacy functions			
<b>Program 1.1</b>			
Complaint handling, compliance and monitoring, and education and promotion			
Administered expenses	–	–	–
Departmental expenses			
Departmental appropriation*	23,527	21,097	2,430
Special appropriations	–	–	–
Special accounts	–	–	–
Expenses not requiring appropriation in the Budget year	332	558	(226)
<b>Total for program 1.1</b>	<b>23,859</b>	<b>21,655</b>	<b>2,204</b>
Outcome 1 totals by appropriation type			
Administered expenses	–	–	–
Departmental expenses			
Departmental appropriation*	23,527	21,097	2,430
Special appropriations	–	–	–
Special accounts	–	–	–
Expenses not requiring appropriation in the Budget year	332	558	(226)
<b>Total expenses for outcome 1</b>	<b>23,859</b>	<b>21,655</b>	<b>2,204</b>
	<b>2019–20</b>	<b>2019–20</b>	
<b>Average staffing level (number)</b>	<b>124</b>	<b>95.4</b>	<b>28.6</b>

\* Departmental appropriation combines ordinary annual services (*Appropriation Act (No. 1) 2019–2020*) and PGPA Act 2013, s 74 retained revenue receipts.

## Appendix B: Executive remuneration

This appendix contains information about the remuneration of the Office Australian Information Commissioner's (OAIC) key management personnel and Senior Executive Service.

### Key management personnel

The OAIC has determined that our key management personnel (KMP) are the Australian Information Commissioner and the Deputy Commissioner. Ms Angelene Falk held the position of Australian Information Commissioner for the duration of the reporting period.

Details of KMP remuneration are in Note 4.2 of the financial statements. Disaggregated information is shown in Table B.1 and is prepared in accordance with the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) and *Commonwealth Entities Executive Remuneration Reporting Guide for Annual Reports, Resource Management Guide No. 138* (RMG 138).

### Senior Executive Service

The OAIC has 3 permanent and 1 temporary substantive Senior Executive Service (SES) positions including the Deputy Commissioner; the Assistant Commissioner, Dispute Resolution; the Assistant Commissioner, Regulation and Strategy; and the Assistant Commissioner – Corporate.

Table B.2 is prepared in accordance with the PGPA Rule and RMG 138 and provides the average annual reportable remuneration for substantive SES.

### Remuneration policies and practices

In accordance with s 17 of the *Australian Information Commissioner Act 2010*, the Australian Information Commissioner's remuneration is set by the Remuneration Tribunal. The Remuneration Tribunal also determine increases to remuneration or allowances.

The OAIC's SES remuneration is determined by the Australian Information Commissioner under s 24(1) of the *Public Service Act 1999*. When determining SES remuneration, the Australian Information Commissioner has regard to the Australian Public Service Commission's Australian Public Service Remuneration Report and comparable agencies.

SES determinations set out the salary on commencement and provide for increments in salary, in line with any percentage up to 5% set by the Remuneration Tribunal for the Australian Information Commissioner.

To be eligible for an increase in salary an SES officer must obtain an annual performance rating of effective or above. The OAIC's performance management framework, Talking About Performance, enables SES officers' performance agreements. The agreement objectives are directly linked to the SES officer's business line responsibilities of the OAIC's Corporate Plan.

The Australian Information Commissioner sets and reviews the Deputy Commissioner's performance agreement. The Deputy Commissioner sets and reviews Assistant Commissioners' performance agreements.



# Remuneration governance arrangements

As a small agency, the Information Commissioner is responsible for setting and monitoring remuneration for the OAIC’s SES officers.

Table B.1: KMP remuneration

		Short-term benefits			Post-employment benefits	Other long-term benefits			Total remuneration (\$)
Name	Position title	Base salary (\$)	Bonuses (\$)	Other benefits and allowances (\$)	Superannuation contributions (\$)	Long service leave (\$)	Other long-term benefits (\$)	Termination benefits (\$)	
Angelene Falk	Australian Information Commissioner	449,080	–	–	34,046	13,217	–	–	496,343
Elizabeth Hampton	Deputy Commissioner	275,264	–	–	50,299	8,601	–	–	334,164
Total		724,344	–	–	84,345	21,818	–	–	830,507

Table B.2: Average SES remuneration

		Short-term benefits			Post-employment benefits	Other long-term benefits	Termination benefits	Total remuneration	
Remuneration band	Number of senior executives	Average base salary (\$)	Average bonuses (\$)	Average other benefits and allowances (\$)	Average superannuation contributions (\$)	Average long service leave (\$)	Average other long-term benefits (\$)	Average termination benefits (\$)	Average total remuneration (\$)
\$0 – \$220,000	4	111,872	–	–	24,525	6,357	–	–	142,754

## Appendix C: Memorandums of understanding

### Australian Capital Territory Government

Under our MOU with the Australian Capital Territory (ACT) Government we continue to provide privacy services to ACT public sector agencies in relation to the *Information Privacy Act 2014* (ACT). These services included:

- responding to privacy complaints and enquiries about ACT public sector agencies
- providing policy and legislation advice and guidance
- providing advice on data breach notifications, where applicable
- carrying out a privacy assessment.

For these services, we received \$177,500 (GST exclusive) from the ACT Government.

For further information on our activities under this MOU, see the *Memorandum of Understanding with the Australian Capital Territory for the Provision of Privacy Services: Annual Report 2019-20* on the OAIC website.

### Australian Digital Health Agency

Under our MOU with the Australian Digital Health Agency, the OAIC continued to provide support and assistance on privacy matters relating to both the My Health Record system and the Healthcare Identifiers Service. These services included:

- responding to enquiries and complaints relating to the privacy aspects of the My Health Record system and Healthcare Identifiers Service

- investigating acts and practices that may have been a misuse of healthcare identifiers or a contravention of the My Health Record system, if required
- receiving data breach notifications and providing advice
- investigating failures to notify My Health Record system data breaches
- conducting privacy assessments
- providing guidance material for individuals and participants in the My Health Record system and Healthcare Identifiers Service
- liaising and coordinating on privacy-related matters and activities with key stakeholders
- preparing relevant communication materials
- providing policy and legislation advice relating to the privacy aspects of the My Health Record system and the Health Identifiers Service
- monitoring and participating in digital health developments.

During this reporting period, we received \$2,070,000 (GST exclusive).

For further information on our activities under this MOU, see the *Annual Report of the Australian Information Commissioner's Activities in Relation to Digital Health 2019-20* on the OAIC website.

## Australian Human Rights Commission

The OAIC entered into a new MOU with the Australian Human Rights Commission (AHRC) for the provision of corporate services on 18 November 2019.

Under this MOU, the AHRC provides a number of corporate services to the OAIC, including financial, information technology and human resource related tasks. We also sublet premises in Sydney from the AHRC.

For the corporate services, we paid 1,379,361 (GST exclusive) and for the premises (including outgoings) we paid \$1,152,281 (GST exclusive) to the AHRC.

## Department of Home Affairs – NFBMC

In November 2017, the Attorney-General's Department and the OAIC signed an MOU for the provision of privacy assessments in relation to the National Facial Biometric Matching Capability (NFBMC).

On 20 December 2017, the Department of Home Affairs assumed responsibility for the NFBMC as part of machinery of government changes and subsequently assumed responsibility for the roles and responsibilities under the MOU.

In February 2018, the Identity-matching Services Bill 2018 was introduced into Parliament but was not passed, so our privacy assessments have been deferred to later financial years. In May 2019 and June 2020, we signed variations to the MOU to defer commencing privacy assessments and associated payments to later years.

## Department of Home Affairs – PNR data assessment

Under our MOU with the Department of Home Affairs we provide a Passenger Name Record (PNR) data-related assessment of whether personal information is being maintained and handled in accordance with the Australian Privacy Principles.

By agreement, no assessment was undertaken this financial year.

**Note** The agreement between Australia and the European Union (EU) on the processing and transfer of PNR data states that, 'The Australian Customs and Border Protection Service has arrangements in place under the Privacy Act for the Information Commissioner to undertake regular formal audits of all aspects of Australian Customs and Border Protection Service's EU-sourced PNR data use, handling and access policies and procedures.'

## Appendix D: Privacy statistics

### Privacy complaints

**Table D.1:** Australian Privacy Principles (APP) issues in privacy complaints in 2019–20

APP issue	Number of complaints	% of total
Use or disclosure of personal information (APP 6)	831	27.3
Security of personal information (APP 11)	781	25.7
Access to personal information (APP 12)	445	14.6
Collection of solicited personal information (APP 3)	378	12.4
Quality of personal information (APP 10)	294	9.7
Direct marketing (APP 7)	106	3.5
Notification of the collection of personal information (APP 5)	106	3.5
Correction of personal information (APP 13)	45	1.5
Open and transparent management of personal information (APP 1)	24	0.8
Dealing with unsolicited personal information (APP 4)	12	0.4
Cross-border disclosure of personal information (APP 8)	10	0.3
Adoption, use or disclosure of government related identifiers (APP 9)	6	0.2
Anonymity and pseudonymity (APP 2)	3	0.1
<b>Total</b>	<b>3,041</b>	

**Note**

A complaint may cover more than one issue.

**Table D.2:** The main remedies agreed in conciliated privacy complaints in 2019–20

Remedy*	Jurisdiction							Total
	Privacy Principles†	Credit reporting	Spent convictions & TFN	Healthcare identifiers	Jurisdiction	My Health Record	NDB scheme	
Compensation	255	12	2	–	–	–	3	272
Record amended	232	67	1	–	–	6	–	306
Apology	229	14	3	1	–	–	–	247
Access provided	209	6	–	–	–	1	–	216
Other & confidential	195	25	1	–	1	4	–	226
Changed procedures	146	5	–	1	–	–	–	152
Staff training or counselling	127	6	–	–	–	–	–	133
<b>Total</b>	<b>1,393</b>	<b>135</b>	<b>7</b>	<b>2</b>	<b>1</b>	<b>11</b>	<b>3</b>	<b>1,552</b>

\* A resolved complaint may involve more than one type of remedy.  
† Includes APPs, National Privacy Principles and the Australian Capital Territory’s Territory Privacy Principles.

**Table D.3:** Compensation amounts in closed privacy complaints in 2019–20

Compensation	Jurisdiction				Total
	Privacy Principles*	Credit reporting	Spent convictions & TFN	NDB scheme	
Up to \$1,000	82	4	–	–	86
\$1,000 to \$5,000	93	8	–	2	103
\$5,001 to \$10,000	30	–	–	1	31
Over \$10,001	50	–	2	–	52

\* Only includes APP complaints.

**Table D.4:** Privacy assessments in 2019–20

Privacy assessment subject		Number of entities assessed	Year opened	Date closed
1	Department of Home Affairs (previously DIBP) – passenger name record	1	2016–17	July 2019
2	Data retention scheme – telecommunications service provider 2	1	2017–18	January 2020
3	Department of Home Affairs (previously DIBP) – connected information environment	1	2017–18	November 2019
4	ACT Government – ACT Housing	1	2017–18	December 2019
5	Data retention scheme – telecommunications service provider 3	1	2018–19	January 2020
6	Data retention scheme – telecommunications service provider 4	1	2018–19	January 2020
7	Unique Student Identifier Transcript Service	1	2018–19	August 2019
8	ACT Government	10	2018–19	July 2019
9	ACT Government – Access Canberra	1	2019–20	Ongoing
10	Department of Home Affairs – Passenger Name Records	1	2019–20	Ongoing
11	COVIDSafe Assessment 1 – Access Controls National Data Store	2	2019–20	Ongoing

**Table D.5:** Digital health assessments in 2019–20

Privacy assessment subject		Number of entities assessed	Year opened	Date closed
Handling of individual healthcare identifiers by a private healthcare operator		1	2017–18	December 2019
Australian Digital Health Agency – handling of personal information		1	2017–18	June 2020
Access security governance for the My Health Record system – pharmacies		14	2018–19	December 2019
Access security governance for the My Health Record system – pathology and diagnostic imaging services		8	2018–19	Ongoing
Access security governance for the My Health Record system – private hospitals		2	2018–19	June 2020
My Health Record, Mobile Apps Combined APP 1.2 and 5 assessment		2	2019–20	Ongoing

**Table D.6:** Enhanced welfare payment integrity (data matching) assessments

Privacy assessment subject	Number of entities assessed	Year opened	Date closed
Department of Human Services Pay-As-You-Go (PAYG) data-matching program	1	2017–18	July 2019
Department of Human Services – information security for the NEIDM and PAYG programs	1	2017–18	Ongoing
Australian Taxation Office – information security as a data source for the Department of Human Services	1	2018–19	June 2020
Department of Veterans Affairs – APP 1.2 Assessment	1	2019–20	Ongoing
Department of Human Services – Annual Investment Income Report data-matching program	1	2019–20	Ongoing

## Appendix E: FOI statistics

This appendix contains information regarding:

- requests for access to documents
- applications for amendment of personal records
- charges
- disclosure logs
- review of freedom of information (FOI) decisions
- complaints about agency FOI actions
- the impact of FOI on agency resources
- the impact of Information Publication Scheme (IPS) on agency resources.

It has been prepared using data collected from Australian Government agencies and ministers subject to the *Freedom of Information Act 1982* (FOI Act), and separately from the Administrative Appeals Tribunal (AAT) and records of the Office of the Australian Information Commissioner (OAIC). Australian Government agencies and ministers are required to provide, among other details, information about:

- the number of FOI requests made to them
- the number of decisions they made granting, partially granting or refusing access, and the number and outcome of applications for internal review
- the number and outcome of requests to them to amend personal records
- charges collected by them.<sup>1</sup>

<sup>1</sup> Australian Government ministers and agencies, and Norfolk Island authorities, are required by s 93 of the FOI Act and reg 8 of the *Freedom of Information (Prescribed Authorities, Principal Offices and Annual Report) Regulations 2017* to submit statistical returns to the OAIC every quarter and provide a separate annual report on FOI and IPS costs.

The data given by ministers and agencies for the preparation of this appendix is published on [data.gov.au](http://data.gov.au).<sup>2</sup>

### Requests for access to documents

#### Types of FOI requests

The term ‘FOI request’ means a request for access to documents made under s 15 of the FOI Act. Applications for amendment or annotation of personal records under s 48 are dealt with separately below.

A request for personal information means a request for documents that contain information about a person who can be identified (usually the applicant, although not necessarily). A request for ‘other’ information means a request for all other documents, such as documents concerning policy development or government decision-making.

The FOI Act requires that agencies and ministers provide access to documents in response to requests that meet the requirements of s 15 of the FOI Act. The statistics in this annual report do not take account of requests that did not satisfy those requirements.

The Governor-General authorised 2 Administrative Arrangements Orders (AAOs) in 2019–20: on 8 August 2019 and 5 December 2019. These AAOs changed the functions and administrative responsibilities of some departments and agencies and resulted in changes to the number and composition of FOI requests received by the affected agencies during the year.

<sup>2</sup> The data reported in this appendix has been rounded to whole numbers. In some cases this means that numbers will not add to 100%.



## Number of FOI requests received

Table E.1 compares the number of FOI requests received in each of the past 6 reporting years, including the percentage increase or decrease from the previous financial year.

**Table E.1:** FOI requests received over the past 6 years

	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20
Number of FOI requests received	35,550	37,966	39,519	34,438	38,879	41,333
% change from previous financial year	+25	+7	+4	–13	+13	+6

The number of FOI requests made to Australian Government agencies increased by 6% in 2019–20, to 41,333, the largest number of FOI requests received by the Australian Government since 2005–06.

As can be seen from Table E.2 (page 141), the increase in the number of FOI requests has principally been the result of increases in requests made to the 20 agencies that receive the highest number of FOI requests, in particular, Services Australia (formerly the Department of Human Services).

While some agencies have attributed increases in the number of FOI requests received during 2019–20 to the impact of the COVID-19 pandemic, the increase in total FOI requests (2,454 more than in 2018–19) is the direct result of a substantial increase in FOI requests made to Services Australia (2,672 more requests than in 2018–19).<sup>3</sup> Services Australia states that during the second half of 2019–20 they

experienced a surge in FOI requests from ‘a specific cohort of applicants who were seeking access to very similar document types’.

A number of agencies have attributed increases in the number of FOI requests they received in 2019–20 to the effect of machinery of government changes which changed or increased their roles and functions.

The increase in FOI requests was not uniform across all agencies and some agencies experienced significant declines in the number of FOI requests.

### Number of FOI requests received by an agency or minister

In 2019–20, the Department of Home Affairs, Services Australia and the Department of Veterans’ Affairs together continued to receive the majority of FOI requests received by Australian Government agencies (70% of the total). Nearly all of these requests (95%) are from individuals seeking access to personal information.

The 20 agencies that received the largest number of requests in 2019–20 are shown in Table E.2 (page 141), with a comparison to the number of requests received by those agencies in 2018–19.

The agencies that experienced large increases in FOI requests in 2019–20 compared with 2018–19 include

<sup>3</sup> Two agencies (the Digital Transformation Agency and the National Archives of Australia) attributed increases in the number of FOI requests received during 2019–20 to the impact of the COVID-19 pandemic. However, 3 agencies (AUSTRAC, Defence Housing Australia and the Independent Parliamentary Expenses Authority) experienced declines in requests and also attributed this to the pandemic.

the Department of the Prime Minister and Cabinet (+99%), the Department of Agriculture, Water and the Environment<sup>4</sup> (+90%), the National Disability Insurance Agency (+82%), Services Australia (+43%), the Department of Defence (+40%), the Department of Health (+40%) and the Department of the Treasury (+29%).

As noted above, some agencies have attributed the increase in FOI requests to the impact of the COVID-19 pandemic. However, this is not the case for all agencies experiencing increases in request numbers in 2019–20. The Department of Defence said its increase in FOI requests was the result of the ADF's involvement in the responses to the bushfire and COVID-19 emergencies; the National Disability Insurance Agency said the number of requests received has grown since the agency was established in 2013, in line with the number of participants receiving support through the National Disability Insurance Scheme; Services Australia said that during the second half of 2019–20 they experienced an increase in the number of FOI requests unrelated to COVID-19.

However, other agencies experienced significant decreases in FOI requests in 2019–20 (compared with 2018–19). For example, Comcare received 46% fewer FOI requests in 2019–20 when compared with 2018–19, which Comcare attributes to an individual who made a large number of FOI requests in 2018–19 but who pursued other avenues for obtaining access in 2019–20. Other agencies to experience decreases included the Attorney-General's Department (-32%), the Immigration Assessment Authority (-26%), the Australian Taxation Office (-25%), the Department of Education, Skills and Employment (-20%), the Department of Foreign Affairs and Trade (-18%) and the Department of Veterans' Affairs (-17%).

4 The Department of Agriculture, Water and the Environment commenced operation on 1 February 2020, and combines the former Department of Agriculture with functions previously administered by the former Department of the Environment and Energy.

## Requests for personal and 'other' documents

In 2019–20, 33,584 FOI requests (or 81% of all requests received) were for documents containing personal information. This is a lower proportion of personal information requests than in the previous 5 years: in 2018–19, 83% of all requests were for predominantly personal information; in 2017–18, 82% of all requests were for personal information; in 2016–17 it was 82%; in 2015–16, 87% and in 2014–15, 85%.

The decrease in the proportion of personal FOI requests may be the result of agencies increasingly making documents available to members of the public using online portals such as myGov.

In 2018–19, there were 7,749 FOI requests (or 19% of all requests) for 'other' (non-personal) information. This is a higher proportion than in 2018–19, when 17% of all requests were for other information. In 2017–18 the proportion was 18%, in 2016–17 it was 18%, in 2015–16 it was 13% and in 2014–15 it was 15%.

There was also considerable variance across government in the number and proportion of personal and other information FOI requests in 2019–20.

Although the Department of Home Affairs experienced a slight decrease in total FOI requests in 2019–20 (164 fewer or a 1% decrease), it received 7% fewer personal FOI requests and 111% more requests for access to other information. This increase in other (non-personal) requests occurred in the context of the Department of Home Affairs experiencing a 45% increase in these type of FOI requests in 2018–19.

While the Department of Veterans' Affairs experienced a 17% decline in overall request numbers in 2019–20, there was a much greater decline (58%) in 'other' FOI requests compared with the previous year. The Australian Taxation Office, which experienced a 25% decrease in total FOI request numbers, experienced a more pronounced decline in requests for access to 'other' information (-43%).

**Table E.2:** Agencies by number of FOI requests received

Agency	Rank	2018–19				2019–20				% of all FOI requests	Rank	2019–20				% of all FOI requests	Change in total
		Personal	Other	Total	% of all FOI requests	Personal	Other	Total	% of all FOI requests			Personal	Other	Total	% of all FOI requests		
Department of Home Affairs	1	16,828	897	17,725	46	1	15,666	1,895	17,561	42							-164
Services Australia <sup>†</sup>	2	5,955	255	6,210	16	2	8,570	312	8,882	21							2,672
Department of Veterans' Affairs	3	2,801	142	2,943	8	3	2,393	60	2,453	6							-490
Administrative Appeals Tribunal	4	1,519	10	1,529	4	4	1,550	14	1,564	4							35
National Disability Insurance Agency	6	782	54	836	2	5	1,439	81	1,520	4							684
Australian Taxation Office	5	1,010	281	1,291	3	6	805	160	965	2							-326
Australian Federal Police	7	588	138	726	2	7	648	179	827	2							101
Department of Defence	10	166	275	441	1	8	287	332	619	1							178
Department of Health	11	62	372	434	1	9	71	486	557	1							123
Australian Transaction Reports and Analysis Centre	9	264	245	509	1	10	232	238	470	1							-39
Immigration Assessment Authority	8	512	0	512	1	11	378	3	381	1							-131
Department of the Prime Minister and Cabinet	19	1	169	170	1	12	8	331	339	1							169
Australian Securities and Investments Commission	14	122	174	296	1	13	73	189	262	1							-34

Agency	2018–19				2019–20				Change in total
	Rank	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other	
Office of the Australian Information Commissioner	15	150	94	244	1	14	142	90	1
Attorney-General's Department	13	215	121	336	1	15	57	173	1
Department of Agriculture, Water and the Environment*†	-	N/A	N/A	N/A	-	16	6	216	1
Department of the Treasury*	-	3	150	153	1	17	5	192	1
Department of Foreign Affairs and Trade	16	90	147	237	1	18	69	126	1
Comcare	12	181	179	360	1	19	123	71	1
Department of Education, Skills and Employment†	17	95	140	235	1	20	80	108	1
<b>Total top 20</b>	-	<b>31,457†</b>	<b>3,968†</b>	<b>35,425†</b>	<b>93</b>	-	<b>32,602</b>	<b>5256</b>	<b>94</b>
Remaining agencies	-	983	2,471	3,454	9	-	982	2,493	8
<b>Total</b>	-	<b>32,440</b>	<b>6,439</b>	<b>38,879</b>	<b>102</b>	-	<b>33,584</b>	<b>7,749</b>	<b>102</b>

Note

Figures may not add to 100 due to rounding.

\* Denotes an agency not in the top 20 agencies in 2018–19.

† Denotes an agency whose name or functions changed as a result of AAOs issued on 8 August 2019 and 5 December 2019. For example, the Department of Agriculture, Water and the Environment combines the former Department of Agriculture with the former Department of the Environment and Energy; the Department of Education, Skills and Employment combines the former Department of Education with parts of the former Department of Employment, Skills, Small and Family Business.

‡ Shows the total for the top 20 agencies in 2018–19 (that is, includes figures for 2 agencies not in the top 20 agency list in 2019–20).

## FOI requests finalised

Agencies and ministers commenced 2019–20 with significantly more FOI requests on hand requiring a decision than the previous financial year (42% more than at the beginning of 2018–19).

In 2019–20 we saw:

- a large increase in the number of FOI requests withdrawn by applicants (41% more than in 2018–19, and in that year 39% more requests were withdrawn than in 2017–18)
- an increase in FOI requests received (6% more)
- a slight reduction in the number of requests decided (3% fewer than in 2018–19)
- 26% more requests on hand at the end of the year (5,941) than at the beginning of the financial year (4,713).

Reasons for the higher number of requests being withdrawn during this reporting period may include:

- increased referral to, or use of, administrative access to provide access to documents outside the FOI Act
- documents already being available on agency disclosure logs or published on agency IPS entries or in annual reports
- applicants accepting verbal assurances that no documents exist within the scope of their request
- the increased use of the practical refusal provisions in s 24 of the FOI Act in 2019–20 (if an applicant does not respond to a practical refusal notice issued under s 24AB of the FOI Act they are deemed to have withdrawn their FOI request – see s 24AB(7))
- requests sent to the wrong agency in the first instance which are then withdrawn and sent to the correct agency.<sup>5</sup>

<sup>5</sup> Although an agency or minister can transfer a wrongly directed FOI request under s 16(1) of the FOI Act, this can only be done with the agreement of the receiving agency. If the applicant makes the request directly to the agency, it must be processed.

Following the 2 AAOs issued by the Governor-General in 2019–20, the number of FOI requests transferred from one agency or minister to another in 2019–20 was 17% higher than in 2018–19, with 747 transferred in 2019–20 compared with 639 in 2018–19.

**Table E.3:** Overview of FOI requests received and finalised

FOI request processing	2018–19	2019–20	% change
On hand at beginning of year	3,308	4,713 <sup>§</sup>	42
Received during the year	38,879	41,333	6
Requiring decision*	42,187	46,046	9
Withdrawn	7,087	10,000	41
Transferred	639	747	17
Decided†	30,144	29,358	–3
Finalised‡	37,870	40,105	6
On hand at end of year	4,317	5,941	38

\* Total of FOI requests on hand at the beginning of this reporting period and requests received during this reporting period.

† Covers access granted in full, part or refused.

‡ The sum of requests withdrawn, transferred and decided.

§ Agencies can ask the OAIC to change the number of FOI requests on hand at the beginning of a reporting year if the number carried over from the previous year is incorrect.

The percentage of FOI requests granted in full decreased from 52% in 2018–19, to 47% in 2019–20. The percentage granted in full in 2017–18 was 50% and in 2016–17 it was 55%.

The percentage of FOI requests granted in part increased from 35% in 2018–19, to 38% in 2019–20. The number of FOI requests refused in 2019–20 (including requests refused because the documents sought do not exist or could not be found, or a practical refusal reason exists, as well as when exemptions have been applied) increased from 13% in 2018–19 to 15% in 2019–20.

As noted above, there was an increase in the number of 'other' (non-personal) FOI requests made to Australian Government agencies in 2019–20. Requests for 'other' information are

generally more complex than requests for access to personal information and more likely to be subject to a wider range of exemptions under the FOI Act.

**Table E.4:** Outcomes of FOI requests decided

Decision	Personal 2018–19	Other 2018–19	Total 2018–19	%	Personal 2019–20	Other 2019–20	Total 2019–20	%
Granted in full*	14,577	1,046	15,623	52	12,296	1,431	13,727	47
Granted in part†	8,835	1,706	10,541	35	9,350	1,871	11,221	38
Refused	2,147	1,833	3,980	13	2,136	2,274	4,410	15
<b>Total</b>	<b>25,559</b>	<b>4,585</b>	<b>30,144</b>	<b>100</b>	<b>23,782</b>	<b>5,576</b>	<b>29,358</b>	<b>100</b>

\* The release of all documents within the scope of the request, as interpreted by the agency or minister.

† A document is granted in part when a part, or parts, of a document have been redacted to remove any irrelevant, exempt or conditionally exempt matter.

Table E.5 (page 145) lists the top 20 agencies by the number of FOI decisions made.

There are differences in the outcome of FOI requests between those agencies processing the largest number of requests in 2019–20 and the remaining Australian Government agencies. The refusal rate for the top 20 agencies is, on average, 13%. For the remaining Australian Government agencies, the refusal rate is much higher, 35%. However, 13 of the top 20 agencies refused access to documents at levels higher than the average across all Australian Government agencies (15%). These agencies process proportionally higher numbers of 'other' information FOI requests.

Correspondingly, the percentage of FOI requests granted in full is much higher for the agencies

in the top 20 (49%) than it is for the remaining agencies (20%). However, the top 5 agencies in terms of FOI requests received (Table E.2 on page 141), which account for 77% of all FOI requests received by the Australian Government, receive predominantly personal FOI requests, which are more likely to be granted in full than 'other' FOI requests (see Table E.4).

Agencies processing higher proportions of FOI requests for personal information generally have higher rates of FOI requests granted in full than the Australian Government average (47% in 2019–20). For example, the Department of Home Affairs, the Department of Veterans' Affairs, the Administrative Appeals Tribunal and the Immigration Assessment Authority.

**Table E.5:** Top 20 agencies by numbers of FOI requests decided in 2019–20

Agency	Granted in full	%	Granted in part	%	Refused	%	Total
Department of Home Affairs	8,193	55	5,145	35	1,438	10	14,776
Services Australia	928	29	1,783	56	468	15	3,179
Department of Veterans' Affairs	1,977	97	43	2	24	1	2,044
National Disability Insurance Agency	538	39	764	55	80	6	1,382
Administrative Appeals Tribunal	774	67	347	30	32	3	1,153
Australian Federal Police	33	4	531	69	206	27	770
Australian Taxation Office	115	18	365	56	168	26	648
Australian Transaction Reports and Analysis Centre	43	9	281	59	153	32	477
Department of Defence	86	19	226	50	141	31	453
Immigration Assessment Authority	260	84	38	12	11	4	309
Department of Health	84	33	76	30	96	37	256
Department of the Prime Minister and Cabinet	32	14	52	23	146	63	230
Australian Securities and Investments Commission	26	14	71	37	93	49	190
Attorney-General's Department	19	10	84	44	86	46	189
Australian Postal Corporation	17	12	14	9	117	79	148
Comcare	39	27	38	26	69	47	146
Department of Agriculture, Water and the Environment	8	6	91	67	37	27	136
Department of Foreign Affairs and Trade	10	7	55	41	71	52	136
Department of Infrastructure, Transport, Regional Development and Communications	25	22	55	50	31	28	111
Department of the Treasury	18	16	39	36	53	48	110
<b>Top 20</b>	<b>13,225</b>	<b>49</b>	<b>10,098</b>	<b>38</b>	<b>3,520</b>	<b>13</b>	<b>26,843</b>
Remaining agencies	502	20	1,123	45	890	35	2,515
<b>Total</b>	<b>13,727</b>	<b>47</b>	<b>11,221</b>	<b>38</b>	<b>4,410</b>	<b>15</b>	<b>29,358</b>



## Use of exemptions

Table E.6 (page 147) shows how Australian Government agencies and ministers claimed exemptions under the FOI Act when processing FOI requests in 2019–20. More than one exemption may be applied in processing an FOI request.

Exemptions were not claimed or were not relevant in relation to 18,823 FOI requests decided in 2019–20 (64% of all FOI requests decided).<sup>6</sup>

Overall, there was very little change in the application of exemptions in 2019–20 when compared with previous years.

The personal privacy exemption (s 47F) remains the most claimed exemption. It was applied in 38% of all FOI requests in which an exemption was claimed in 2019–20, the same percentage as 2018–19. However, the use of s 47F has declined over the past 2 years. It comprised 43% of the exemptions applied in 2017–18 and 48% in 2016–17.

The next most claimed exemptions were s 47E (certain operations of agencies: 20%, down slightly from 21% in 2018–19), s 37 (documents affecting enforcement of law and protection of public safety: 10% which was the same as 2018–19 and slightly up on 2017–18 when it was 9%), s 47C (deliberative processes: 8%, an increase over 2018–19 (7%) and 2017–18 (5%)), s 38 (documents to which secrecy provisions apply: 7%, the same as 2018–19 and 2016–17) and s 33 (documents affecting national security, defence or international relations: 4%, slightly down on 2018–19 when it was 5%).

<sup>6</sup> In 2018–19, the OAIC reported that exemptions were not claimed or were not relevant in relation to 6,718 FOI requests (22% of all FOI requests decided). The difference between 2018–19 and 2019–20 is the result of the Department of Home Affairs not providing information about the number of FOI requests decided in which exemptions were not claimed or were not relevant in 2018–19. The Department reported deciding 10,696 FOI requests in which exemptions were not claimed or were not relevant in 2019–20.

## Use of practical refusal

Section 24AB of the FOI Act sets out that a ‘request consultation process’ must be undertaken if a ‘practical refusal reason’ exists (s 24AA). A practical refusal reason exists if the work involved in processing the FOI request would substantially and unreasonably divert the agency’s resources from its other operations, or if the FOI request does not adequately identify the documents sought.

The request consultation process involves the agency sending a written notice to the FOI applicant advising them that the agency intends to refuse the request and providing details of how the FOI applicant can consult the agency. The FOI Act imposes an obligation on the agency to take reasonable steps to help the FOI applicant revise their request so that the practical refusal reason no longer exists.

Table E.7 (page 147) provides information about how Australian Government agencies and ministers engaged in request consultation processes under s 24AB of the FOI Act in 2019–20 and the outcome of those processes.

Agencies sent 71% more notices of an intention to refuse an FOI request for a practical refusal reason in 2019–20 than in 2018–19, when 2,225 notices were sent. The reason for this increase was a substantial increase in the number of practical refusal notices issued by the Department of Home Affairs (which issued 792 notices in 2018–19 and 2,713 in 2019–20). The Department of Home Affairs issued practical refusal notices for 15% of all the FOI requests it received during 2019–20 (the Department of Home Affairs received 17,561 FOI requests).

In 2019–20, 88% of the FOI requests subject to a notice of intention to refuse a request were subsequently refused or withdrawn. The proportion was 77% in 2018–19, 84% in 2017–18 (noting 2017–18 was an atypical year in which once agency refused a large number of related requests for a practical refusal reason) and 66% in 2016–17. This increase in subsequent refusals or withdrawals is the result of the Department of Home Affairs issuing a large number of notices and subsequently processing very few requests (discussed further below).



**Table E.6:** Use of exemptions in FOI decisions in 2019–20

FOI Act reference	Exemption	Personal	Other	Total	% of all exemptions applied
s 33	Documents affecting national security, defence or international relations	481	230	<b>711</b>	4
s 34	Cabinet documents	5	182	<b>187</b>	1
s 37	Documents affecting enforcement of law and protection of public safety	1,447	183	<b>1,630</b>	10
s 38	Documents to which secrecy provisions of enactments apply	974	88	<b>1,062</b>	6
s 42	Documents subject to legal professional privilege	215	175	<b>390</b>	2
s 45	Documents containing material obtained in confidence	34	182	<b>216</b>	1
s 45A	Parliamentary Budget Office documents	–	3	<b>3</b>	1
s 46	Documents disclosure of which would be contempt of Parliament or contempt of court	16	14	<b>30</b>	1
s 47	Documents disclosing trade secrets or commercially valuable information	27	170	<b>197</b>	1
s 47A	Electoral rolls and related documents	9	15	<b>24</b>	1
s 47B	Commonwealth-state relations	145	57	<b>202</b>	1
s 47C	Deliberative processes	846	513	<b>1,359</b>	8
s 47D	Financial or property interests of the Commonwealth	114	25	<b>139</b>	1
s 47E	Certain operations of agencies	2,589	751	<b>3,340</b>	20
s 47F	Personal privacy	5,256	937	<b>6,193</b>	38
s 47G	Business	207	391	<b>598</b>	4
s 47H	Research	6	4	<b>10</b>	1
s 47J	The economy	–	6	<b>6</b>	1

**Note**

Figures may not add to 100 due to rounding.

**Table E.7:** Use of practical refusal in 2019–20

Practical refusal processing step	Personal	Other	Total	%*
Notified in writing of intention to refuse request	3,002	801	<b>3,803</b>	–
Request was subsequently refused or withdrawn	2,840	522	<b>3,362</b>	88
Request was subsequently processed	162	279	<b>441</b>	12

\* Percentage of the total number of notices advising of an intention to refuse a request for a practical refusal reason.

Lower proportions of FOI requests subsequently refused, or withdrawn after a practical refusal notice is issued, suggests agencies have been better at assisting applicants revise the scope of their requests so they can be processed. Therefore, given that 2017–18 was an atypical year, there was a significant deterioration in the effectiveness of agency consultations under s 24AB of the FOI Act in 2019–20 when compared with previous years.

The Department of Home Affairs, which issued 71% of all notices of an intention to refuse a request for a practical refusal reason in 2019–20 (2,713), subsequently processed only 6 FOI requests after issuing a notice of intention to refuse a request

for a practical refusal reason (less than 1%). For all other agencies, this percentage was 40%. The low rate of FOI requests subsequently processed by the Department of Home Affairs indicates that its consultation with applicants has not been effective in removing the practical refusal reason. This low rate of FOI requests being processed after the issuing of a consultation notice is particularly notable because the Department of Home Affairs issued notices predominantly in relation to requests for access to personal information (98%). For all other Australian Government agencies, notices of intention to refuse for a practical refusal reason were issued predominantly in relation to 'other' (non-personal) FOI requests (68%).

### Time taken to respond to FOI requests

Agencies and ministers have 30 days within which to make a decision under the FOI Act. The FOI Act allows for the timeframe to be extended in certain circumstances.<sup>7</sup>

If a decision is not made in response to an FOI request within the statutory timeframe (including any extension period) then s 15AC of the FOI Act provides that a decision refusing access is deemed to have been made. Nonetheless, agencies have an obligation to continue to process a request that has been deemed to be refused.

In 2019–20, 79% of all FOI requests determined were processed within the applicable statutory time period: 80% of all personal information requests and 73% of all non-personal requests.

<sup>7</sup> An agency may extend the period of time to make a decision by agreement with the applicant (s 15AA), or to undertake consultation with a third party (ss 15(6)–(8)). An agency can also apply to the Information Commissioner for more time to process a request when the request is complex or voluminous (s 15AB), or when access has been deemed to have been refused (ss 15AC and 51DA) or deemed to have been affirmed on internal review (s 54D). These extension provisions acknowledge there are circumstances when it is appropriate for an agency to take more than 30 days to process a request. When an agency has obtained an extension of time to deal with an FOI request and finalises the request within the extended time, the request is recorded as having been determined within the statutory time period.

This represents a decrease in the timeliness of decision-making from 2018–19, when 83% of all FOI requests were decided within time and 2017–18, when 85% were decided within time.

The COVID-19 pandemic affected the ability of some Australian Government agencies to respond to FOI requests within the statutory timeframes in the FOI Act. In some agencies, FOI staff were redeployed to work in frontline customer service roles while the internal redeployment of other staff to meet service delivery needs made it difficult to obtain documents to satisfy FOI requests and to engage with decision makers, many of whom assumed additional responsibilities as part of their agency's response to the pandemic. Interagency consultation also presented challenges, particularly with agencies heavily involved in delivering Australia's response to the pandemic. For agencies with staff working remotely, some aspects of FOI processing was more difficult, for example, manipulating large files and using redaction software can be slower on domestic internet servers and in some cases the necessary IT infrastructure was not in place to allow staff to work from home, resulting in delays that affected productivity. Posting and receiving hard copy documents, particularly for staff living in locations subject to movement restrictions, was difficult. For some agencies, the impact of COVID-19 was more significant because they were in the early stages of integrating functions following machinery of government changes that came into effect on 1 February 2020.

Some agencies decided fewer than 50% of FOI requests within the statutory timeframes in 2019–20. These agencies include the Minister for the Environment, the Australian Radiation Protection and Nuclear Safety Agency, the Australian Sports Anti-Doping Authority, the Australian Sports Commission, the Australian Federal Police, the Australian Broadcasting Corporation, the Minister for Infrastructure, Transport and Regional Development, the Prime Minister and the Norfolk Island Regional Council.

Because of the large number of FOI requests the Department of Home Affairs receives, it is worth noting that the its compliance with statutory

timeframes was 66% in 2019–20, which is below the Australian Government average of 79%. This represents a decline in timeliness compared with 2018–19 (when it was 74%) and 2017–18 (75%). The Department of Home Affairs decided 69% of personal FOI requests within the statutory timeframes in 2019–20 but decided only 37% of ‘other’ (non-personal) requests within time.

There was a significant increase in the number of FOI requests decided more than 90 days over the applicable statutory time period when compared with previous years. While 10% of all requests decided in 2019–20 were decided more than 90 days

after the expiry of the statutory processing period, it was 2% in 2018–19 and 7% in 2017–18.

A number of agencies that process large numbers of FOI requests (more than 50) decided them all within the statutory time period in 2019–20. These agencies include the Department of Health (256 requests decided in 2019–20), IP Australia (109), the former Department of Employment, Skills, Small and Family Business (104), the Office of the Australian Information Commissioner (101), the Department of Education, Skills and Employment (82), the Department of Social Services (63) and the Department of Finance (59).

**Table E.8:** Response times greater than 90 days after the expiry of the applicable statutory period in 2019–20

Agency	Total requests decided	Requests decided more than 90 days after statutory period	% FOI requests received by agency or minister
Australian Fisheries Management Authority	2	1	50
Office of the Registrar of Indigenous Corporations	67	29	43
Australian Institute of Aboriginal and Torres Strait Island Studies	3	1	33
Treasurer	3	1	33
Department of Home Affairs	14,776	2,827	19
Australian Sports Anti-Doping Authority	21	4	19
Clean Energy Regulator	17	3	18
Australian Broadcasting Corporation	52	9	17
Veterans’ Review Board	6	1	17
Administrative Appeals Tribunal	1,153	2	1
Department of Veterans’ Affairs	2,044	3	1
Australian Electoral Commission	24	1	4
Department of Foreign Affairs and Trade	136	4	3
Department of Industry, Science, Energy and Resources	80	2	2
Australian Federal Police	770	17	2
Australian Maritime Safety Authority	48	1	2
Australian Criminal Intelligence Commission	67	1	1
Australian Transaction Reports and Analysis Centre	477	3	1
Department of the Prime Minister and Cabinet	230	1	1
Australian Taxation Office	648	4	1
Services Australia	3,179	3	1
National Disability Insurance Agency	1,382	1	1

## Applications for amendment of personal records

Section 48 of the FOI Act confers a right on a person to apply to an agency or to a minister to amend a document to which lawful access has been granted, when the document contains personal information about the applicant:

- that is incomplete, incorrect, out of date or misleading and
- that has been used, is being used, or is available for use by the agency or minister for an administrative purpose.

In 2019–20, 7 agencies received 717 amendment applications (no applications were received by ministers). This is a 7% increase in applications from 2018–19, when 673 applications were received. However, in 2018–19 there was a 32% increase in applications compared with the previous year

(510 amendment applications were made in 2017–18).

The increase in amendment applications is largely due to an increase in applications received by the Department of Home Affairs (6% more in 2019–20 than in 2018–19). Increases in amendment applications were also experienced by the Department of Defence (an 87% increase, from 15 to 28 applications) and Services Australia (a 71% increase, from 17 to 29 applications).

Table E.9 compares the decision-making for amendment applications with 2018–19. In 2019–20, a decision was made to amend or annotate a person's personal record in 88% of all decided applications, an increase in the proportion of decisions made to amend or annotate in 2018–19, when 76% of all applications were granted. Because the Department of Home Affairs accounted for 91% of all amendment applications received, overall trends in amendment decision-making were largely determined by decisions made by that Department.

**Table E.9:** Decisions on amendment applications

Decision	2018–19	% of total	2019–20	% of total	% change*
Applications granted: amend record	407	63	515	78	27
Applications granted: annotate record	80	13	68	10	–15
Applications granted: amend and annotate record	–	–	–	–	–
Applications refused	155	24	79	12	–31
<b>Total decided</b>	<b>642</b>	<b>100</b>	<b>662</b>	<b>100</b>	<b>–</b>

\* Percentage increase or decrease over 2018–19.

## Time taken to respond to amendment applications

An agency is required to notify an applicant of a decision on their application to amend personal records as soon as practicable, but in any case, not later than 30 days after the day the request is received, or a longer period as extended under the FOI Act.

In 2019–20, 90% of all amendment applications were decided within the applicable statutory time frame, the same as in 2018–19.

## Internal review of amendment decisions

In 2019–20, 7 applications for internal review of amendment decisions were made: 4 applications were made to the Department of Home Affairs;

2 to the former Department of Employment, Skills, Small and Family Business; and one to the Department of Defence. Six internal review decisions were made during the reporting year; 5 decisions granted the requested amendment or annotation and one decision was made refusing the requested alteration.

## Charges

Section 29 of the FOI Act provides that an agency or minister may impose charges in respect

of FOI requests, except requests for personal information, and sets out the process by which charges are assessed, notified and adjusted.

Table E.10 shows the amounts collected by the 20 agencies that collected the most in charges under the FOI Act in 2019–20. These top 20 agencies are responsible for 90% of all charges collected by Australian Government agencies and ministers under the FOI Act.

**Table E.10:** Top 20 agencies by charges collected in 2019–20

Agency	Requests received	Requests where charges notified	Total charges notified (\$)	Total charges collected (\$)
Department of Health	557	149	40,696	19,075
Civil Aviation Safety Authority	145	40	13,333	8,929
Department of Education, Skills and Employment	188	55	15,379	6,990
Department of Industry, Science, Energy and Resources	128	2	12,211	5,064
Department of Defence	619	19	19,895	4,741
Australian Competition and Consumer Commission	62	28	11,172	4,431
Australian Maritime Safety Authority	65	7	5,772	4,168
Department of Agriculture, Water and the Environment	222	32	5,836	3,738
Department of Agriculture	78	27	3,663	3,452
Bureau of Meteorology	22	8	4,637	3,156
Commonwealth Scientific and Industrial Research Organisation (CSIRO)	42	3	3,182	2,820
National Health and Medical Research Council	20	8	5,378	2,605
National Indigenous Australians Agency	56	6	4,809	2,406
Great Barrier Reef Marine Park Authority	7	7	10,050	2,207
Services Australia	8,882	66	10,008	1,782
Department of the Prime Minister and Cabinet	339	21	5,566	974
Department of Employment, Skills, Small and Family Business	138	24	6,921	798
Airservices Australia	32	15	9,099	796
Comcare	194	2	1,207	747
Australian Pesticides and Veterinary Medicines Authority	20	2	1,679	686
<b>Top 20</b>	<b>11,816</b>	<b>521</b>	<b>190,493</b>	<b>79,565</b>
Remaining agencies	29,517	195	76,576	8,525
<b>Total</b>	<b>41,333</b>	<b>716</b>	<b>267,069</b>	<b>88,090</b>

In 2019–20, agencies notified a total of \$267,069 in charges with respect to 716 FOI requests, but collected only \$88,090 (33% of the total notified). This difference is due to agencies exercising their discretion under s 29 of the FOI Act not to impose the whole charge, or applicants withdrawing their FOI request and not paying the notified charge.

Agencies notified and collected less in charges in 2019–20 than in 2018–19. As noted above, in 2019–20, agencies notified a total of \$267,069 in charges, 25% less than in 2018–19, when \$357,039 was notified. In 2019–20, \$88,090 was collected, a 28% decrease compared to 2018–19 when \$122,774 was collected. Total charges notified and total charges collected have declined year-on-year since 2013–14, when \$734,762 was notified and \$239,628 was collected.

## Disclosure logs

All Australian Government agencies and ministers subject to the FOI Act are required to maintain an FOI disclosure log on a website. The disclosure log lists information that has been released to FOI applicants, subject to some exceptions (such as personal or business information). Information about agency and ministerial compliance with disclosure log requirements has been collected since 2012–13.

Australian Government agencies reported 1,949 new entries on disclosure logs during 2019–20 including documents available for download directly from the agency or minister's website in relation to 1,468 requests, documents available from another website in relation to 56 requests, and 425 entries in which the documents are available by another means (usually upon request).

The total number of new entries published on disclosure logs in 2019–20 was 62% higher than 2018–19, when 1,200 new entries were added.

There has been an increase in the proportion of new documents which members of the public can access directly from agency websites (in 2019–20 it was 75% compared to 59% in 2018–19).

As explained in our FOI Guidelines, publication of documents directly through the disclosure log, rather than providing a description of the documents and how they can be obtained on request from the agency or minister, is consistent with the FOI Act object of facilitating public access to government information.<sup>8</sup>

In 2019–20, agencies and ministers reported a total of 40,776 unique visits to disclosure logs and 165,169 page views, which represents an 81% decrease in unique visits since 2018–19 and a 23% decrease in total page views reported in 2018–19. It is not clear whether this decrease is the result of reduced reporting (the online form completed by agencies defaults to a response that website statistics are not collected, however this has been a feature of the reporting form for a number of years), or whether there was a decrease in both unique visitors and page views.

## Review of FOI decisions

Under the FOI Act, an applicant who is dissatisfied with the decision of an agency or minister on their initial FOI request has a number of avenues of review. The applicant can seek internal review with the agency or minister or external merits review by the Information Commissioner (IC review). Information Commissioner decisions under s 55K are reviewable by the AAT. AAT decisions may be appealed on a question of law to the Federal Court. In addition, an applicant can complain at any time to the Information Commissioner about an agency's actions under the FOI Act.

Third parties who have been consulted in the FOI process also have review rights if an agency or minister decides to release documents contrary to their submissions. Consultation requirements apply for state governments (s 26A), commercial organisations (s 27), and private individuals (s 27A).

<sup>8</sup> FOI Guidelines [14.32].

## Internal review

Although there is no statutory obligation to do so, the Information Commissioner recommends and encourages FOI applicants to apply for an internal review before applying for an IC review.

In 2019–20, 942 applications were made for an internal review of FOI decisions, 5% more than in 2018–19 (when 893 internal review applications were made). This increase is noteworthy in the context of fewer FOI requests being decided in 2019–20. In 2019–20, 3% of all FOI requests determined led to applications for internal review, the same as in 2018–19. This indicates that applicants were more likely than in previous years to seek internal review with the agency, rather than proceeding directly to external review by the Information Commissioner.

Of the 942 applications for an internal review, 572 (61%) were for review of decisions made in response to requests for personal information and 370 (39%) were for review of decisions on other (non-personal) information requests. On the basis that 81% of all FOI decisions determined in 2019–20 were made with respect to requests for access to personal information, this indicates that FOI applicants seeking access to personal information are less likely to seek internal review than those seeking to access other (non-personal) information.

Agencies finalised 890 decisions on internal review in 2019–20. This was 7% more than in 2018–19 (829). Of these, 442 (49%) affirmed the original decision, 138 (15%) set aside the original decision and granted access in full, 235 (26%) granted access in part, 13 (1%) granted access in another form, 14 (2%) resulted in lesser access and applicants withdrew 43 applications (5%) without concession by the agency. Agencies reduced the

charges levied as a result of internal review in 4 cases (1%).

As noted above, there were 7 applications for internal review of decisions made with respect to amendment applications, 1 fewer than in 2018–19. Agencies made 6 internal review decisions on amendment applications compared to 10 in 2018–19. In 1 review, the original decision was affirmed and in the remaining 5, the original decision was set aside and the requested alteration or annotation was made. In 2018–19, 8 of original decisions were affirmed and 2 were set aside.

## IC review applications

Table E.11 provides a breakdown by agency and minister of the IC review applications received in 2019–20, where the agency or minister was the subject of more than one IC review. In total, there were 1,066 applications for IC review (up 15% from 928 in 2018–19).

In general, the agencies that receive the most FOI requests also have the most IC review applications. In 2019–20, of the agencies experiencing the most IC reviews, 13 also appear in the list of top 20 agencies in terms of the number of FOI requests received.

However, some agencies that do not receive large numbers of FOI requests are the subject of a comparatively large number of IC review applications given their FOI caseload. In 2019–20, the agencies with a large number of IC reviews lodged, expressed as a proportion of the total number of FOI requests received, include the Prime Minister (22%), the Department of Foreign Affairs and Trade (17%), Comcare (15%), the National Indigenous Australians Agency (14%) and the Australian National University (10%).



**Table E.11:** Information Commissioner review – top 20 by review applications received

Agency/minister	FOI requests received	Access refusal decisions	Access grant decisions	Total IC reviews	% of FOI requests
Department of Home Affairs	17,561	283	–	283	2
Services Australia	8,882	153	–	153	2
Australian Federal Police	827	58	–	58	7
Department of Defence	619	40	1	41	7
Department of Foreign Affairs and Trade	195	33	–	33	17
Comcare	194	29	–	29	15
National Disability Insurance Agency	1,520	27	–	27	2
Australian Taxation Office	965	26	–	26	3
Prime Minister of Australia	101	22	–	22	22
Department of Health	557	21	–	21	4
Department of the Prime Minister and Cabinet	339	21	–	21	6
Attorney-General's Department	230	21	–	21	9
Australian Securities and Investments Commission	262	15	1	16	6
Department of the Environment and Energy*	N/A	11	4	15	N/A
Department of Agriculture, Water and the Environment†	222	8	2	10	5
Commonwealth Ombudsman	120	9	–	9	8
Department of Infrastructure, Transport, Cities and Regional Development	160	9	–	9	6
Department of Industry, Transport, Cities and Regional Development	128	9	–	9	7
National Indigenous Australians Agency	56	8	–	8	14
Department of Social Services	138	8	–	8	6
Civil Aviation Safety Authority	145	5	3	8	6
Australian National University	79	8	–	8	10
<b>Sub-total</b>	<b>33,300</b>	<b>824</b>	<b>11</b>	<b>835</b>	<b>3</b>
Remaining agencies/ministers	8,033	217	14	231	3
<b>Total</b>	<b>41,333</b>	<b>1041</b>	<b>25</b>	<b>1,066</b>	<b>3</b>

\* New department, commenced operations 1 February 2020.



There was a 26% increase in the number of IC reviews finalised by the OAIC in 2019–20 (829), compared with 2018–19 (when 659 were finalised).

In 2019–20, 777 IC reviews were finalised without a formal decision being made under s 55K of the FOI Act (94% of all IC reviews finalised during this reporting period). This is a higher percentage than in 2018–19 (91%) and 2017–18 (80%).

In 2019–20, 82 IC reviews were declined under s 54W(a) (lacking in substance, failure to cooperate, or lost contact) compared to 39 in 2018–19. There were 83 IC reviews declined under s 54W(b) (refer to AAT) compared with 31 in 2018–19. The total number of IC review applications declined under s 54W<sup>9</sup> of the FOI Act increased as a percentage of the total IC reviews finalised in 2019–20. In 2019–20, 255 IC reviews were declined under s 54W (31%). This is a higher percentage than in both 2018–19 (30%) and 2017–18 (27%).

Of the 829 IC review applications finalised, 11% were declined under s 54W(a)(i) (frivolous, vexatious, misconceived, lacking in substance, or not made in good faith), 9% were declined under s 54W(a)(ii) (failure to cooperate), 1% under s 54W(a)(iii) (lost contact) and 10% under s 54W(b) (allow to go direct to the AAT).

In 2019–20, the Information Commissioner made 50 decisions under s 55K of the FOI Act. Of the 50 decisions, 24 affirmed the decision under review (48%), 19 set aside the reviewable decision (38%) and 7 decisions were varied (14%). Of the 24 decisions that affirmed the decision under review, 19 (79%) decisions were made with respect to access refusal decisions and 5 (21%) were made in relation to access grants. Each of the 19 decisions that set aside the reviewable decision, and the 7 decisions that varied the reviewable decision were access refusals. In 2018–19, the Information Commissioner affirmed 32% of decisions, set aside 62% and varied 7%.

Of the 24 decisions affirmed by the Information Commissioner, 8 decisions (33%) had been revised by the agency or minister under s 55G of the FOI Act during the IC review, giving greater access to the documents sought. Of the 19 decisions set aside by the Information Commissioner, 9 decisions (47%) had been revised by the agency or minister under s 55G of the FOI Act during the IC review, giving greater access to the documents sought.

The percentage of applications received by the OAIC which were out of jurisdiction or invalid increased from 16% in 2018–19, to 19% in 2019–20.

<sup>9</sup> Section 54W of the FOI Act contains a number of grounds under which the Information Commissioner may decide not to undertake an IC review or not to continue to undertake an IC review.

**Table E.12:** Information Commissioner review outcomes

Information Commissioner decisions	2018–19	% of 2018–19 total	2019–20	% of 2019–20 total
Section 54N — out of jurisdiction or invalid	103	16	161	19
Section 54R — withdrawn	199	30	180	22
Section 54R — withdrawn/conciliated	76	13	154	19
Section 54W(a)(i) — frivolous, vexatious, misconceived, lacking in substance, or not in good faith	126	19	90	11
Section 54W(a)(ii) — failure to cooperate	34	5	76	9
Section 54W(a)(iii) — lost contact	5	1	6	1
Section 54W(b) — refer to AAT	31	5	83	10
Section 54W(c) — failure to comply	–	–	–	–
Section 55F — set aside by agreement	13	2	12	1
Section 55F — varied by agreement	12	2	17	2
Section 55F — affirmed by agreement	–	–	–	–
Section 55G — substituted	–	–	–	–
Section 55K — affirmed by Information Commissioner	19	3	24	3
Section 55K — set aside by Information Commissioner	37	6	19	2
Section 55K — varied by Information Commissioner	4	1	7	1
<b>Total</b>	<b>659</b>	<b>103</b>	<b>829</b>	<b>100</b>

**Note**

Figures may not add to 100 due to rounding.

**Administrative Appeals Tribunal review**

An application can be made to the AAT for review of the following FOI decisions:

- a decision of the Information Commissioner under s 55K
- an IC reviewable decision (that is, an original decision or an internal review decision), but only if the Information Commissioner decides, under s 54W(b), that the interests of the

administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT directly.

In 2019–20, 52 applications for review of FOI decisions were made to the AAT. This is a 148% increase from 2018–19, when 21 applications were made to the AAT.

Table E.13 provides a breakdown, by agency, of applications to the AAT in relation to FOI decisions in 2019–20. This data has been provided by the AAT.

**Table E.13:** AAT review by agency (respondent)

Respondent	Applications
National Disability Insurance Agency	7
Department of Defence	4
Australian Securities & Investments Commission	3
Department of Home Affairs	3
Attorney-General's Department	2
Australian Transaction Reports and Analysis Centre	2
Australian Federal Police	2
Department of Foreign Affairs and Trade	2
Department of Industry, Science, Energy and Resources	2
Department of Veterans' Affairs	2
Office of the Australian Information Commissioner	2
Services Australia	2
Aged Care Quality and Safety Commissioner	1
Attorney-General	1
Australian Financial Security Authority	1
Australian Sports Anti-Doping Authority	1
Australian Taxation Office	1
Department of Finance	1
High Court of Australia	1
Indigenous Business Australia	1
Minister for Energy and Emissions Reduction	1
Office of the Commonwealth Director of Public Prosecutions	1
Professional Services Review	1
Sport Integrity Australia	1
Other (appeals by agencies against IC review decisions)	7
<b>Total</b>	<b>52</b>

In 2019–20, 2 agencies sought review in the AAT of decisions made by the Information Commissioner under s 55K of the FOI Act – Services Australia (6 applications) and the Department of Defence (1 application).

Fifty-seven applications remain outstanding with the AAT at the end of 2019–20. This is a 171% increase on the number of applications outstanding at the end of 2018–19 (21).

Table E.14 shows the outcome of the 30 FOI reviews finalised by the AAT in 2019–20. The AAT provided this data.

**Table E.14:** Outcomes of FOI reviews finalised by the AAT

AAT outcomes	Number in 2018–19	% of total 2018–19	Number in 2019–20	% of total 2019–20
Affirmed by consent	1	5	–	–
Varied/set aside/remitted by consent	4	20	2	7
Dismissed by consent	–	–	–	–
Withdrawn by applicant	4	20	4	13
Decision affirmed	6	30	9	30
Decision varied/set aside	1	5	3	10
Dismissed by AAT — frivolous or vexatious/ fail to comply with direction	–	–	2	7
Dismissed — no application fee paid	1	5	–	–
Dismissed — non-reviewable decision	3	15	10	33
<b>Total</b>	<b>20</b>	<b>100</b>	<b>30</b>	<b>100</b>

Of the 30 FOI reviews finalised by the AAT, 12 (40%) resulted in published decisions in 2019–20.

The AAT affirmed the agency's decision in 9 (30%) of the 30 AAT reviews finalised; the same percentage as in 2018–19.

Of the 30 FOI reviews finalised in 2019–20, 3 involved applications made by Australian Government agencies following decisions made by the Information Commissioner under s 55K of the FOI Act. Of these 3 reviews, 2 applications were varied or set aside (by decision), and 1 was varied or set aside by consent.

## Federal Court

No judicial decisions relating to FOI matters were made during 2019–20.

## Impact of FOI on agency resources

To assess the impact on agency resources of their compliance with the FOI Act, agencies are asked to estimate the hours staff spent on FOI matters and the non-labour costs directly attributable to FOI, such as legal and specific FOI training costs. Agencies submit these estimates annually. Agency estimates may also include FOI processing work undertaken on behalf of a minister's office.

Agencies are also asked to report their costs of compliance with the IPS. To facilitate comparison with information in previous annual reports, IPS costs are not included in this analysis of the cost of agency compliance with the FOI Act, but are discussed separately below.

The total reported cost attributable to processing FOI requests in 2019–20 was \$63.9 million, a 7% increase over the previous financial year's total of \$59.9 million.

The reason for the increase in the overall cost of FOI activity is a 6% increase in the total staff hours devoted to FOI in 2019–20 (when compared with

2018–19). The total number of staff hours spent in FOI activity in 2018–19 was 840,803 but that rose to 893,564 in 2019–20. As a result, the average cost of each FOI request determined during this reporting period rose to \$2,176 (from \$1,985 in 2018–19).

Table E.15 sets out the average cost per FOI request determined (granted in full, in part or refused) compared to the last 3 financial years. The average cost per request determined in 2019–20 was \$2,177 (up 10% from 2018–19).

**Table E.15:** Average cost per request determined

Year	Requests determined	Total cost (\$)	Average cost per request determined (\$)
2019–20	29,358	63,906,111	2,177
2018–19	30,144	59,844,953	1,985
2017–18	31,674	52,186,179	1,648
2016–17	34,029	44,787,154	1,316

## Staff costs (FOI)

All agencies are asked to supply information about staff resources allocated to FOI.

**Table E.16:** Total FOI staffing across all Australian Government agencies

Staffing	2017–18	2018–19	2019–20	% change
Total staff hours	744,350	840,803	893,564	6
Total staff years	372.2	420.4	446.8	6

Agencies provide estimates of the number of staff hours spent on FOI to enable calculation of salary costs (and 60% related costs) directly attributable to FOI request processing.

**Table E.17:** Estimated staff costs of FOI compared to last year

Type of staff	Staff years 2018–19	Total staff costs 2018–19	Staff years 2019–20	Total staff costs 2019–20	Total staff costs (% change)
FOI contact officers	311.7	38,946,729	326.5	41,202,750	6
SES	13.8	4,324,454	16.5	5,353,577	24
APS Level 6 and EL 1–2	50.3	9,166,395	53.2	9,780,761	7
APS Levels 1–5	43.1	4,406,957	47.5	4,923,532	12
Minister and advisers	0.9	211,357	1.1	256,145	21
Minister's support staff	0.6	64,207	2.0	210,519	228
<b>Total</b>	<b>420.4</b>	<b>57,120,102</b>	<b>446.8</b>	<b>61,727,284</b>	<b>8</b>

A summary of staff costs is provided in Table E.17, based on information provided by agencies and ministers and is calculated using the following median base annual salaries from Australian Public Service Commission public information:<sup>10</sup>

- FOI contact officer (officers whose duties included FOI work) \$78,873<sup>11</sup>
- other officers involved in processing requests:
  - Senior Executive Service (SES) officers (or equivalent) \$202,910<sup>12</sup>
  - Australian Public Service (APS) Level 6 and Executive Levels (EL) 1–2 \$115,005<sup>13</sup>
  - Australian Public Service (APS) Levels 1–5 \$64,799<sup>14</sup>
- Minister's office:
  - Minister and advisers \$142,556<sup>15</sup>
  - Minister's support staff \$64,799<sup>16</sup>

10 Because salary levels differ between agencies, median salary levels have been used. These will be published by the Australian Public Service Commission in its *APS Remuneration Report 2019*. These median levels are as at 31 December 2019.

11 APS Level 5 base salary median.

12 SES Band 1 base salary median.

13 Executive Level 1 base salary median.

14 APS Level 3 base salary median.

15 Executive Level 2 base salary median.

16 APS Level 3 base salary median.

Total estimated staff costs in 2019–20, were \$61.7 million, 8% more than in 2018–19. In 2018–19, total estimated staff costs rose by 15% over the previous financial year.

## Non-labour costs

Non-labour costs directly attributable to FOI are summarised in Table E.18, including the percentage change from the previous year. The total non-labour costs in 2019–20 were \$2.2 million, a 20% decrease compared with the previous financial year (\$2.7 million).

The most significant decrease in non-labour costs in 2019–20 was in relation to training costs, which decreased by 56%. Training costs reflect training provided to new FOI staff, as well as ongoing training for existing staff. This decrease may be the result of the substantial increase in training costs in 2018–19 compared with the previous year (19% higher in 2018–19 than in 2017–18) which may mean that many staff undertook training during the last financial year. The ability of agencies to delivery FOI training may also have been impacted by the COVID-19 pandemic, which changed staff priorities and limited training opportunities.

There was also a large decrease in non-labour costs in 2019–20 in relation to general legal advice costs, which were 53% lower than in 2019–20.

As can be seen from Table E.18, there was also a small (5%) decrease in general administrative costs (this includes printing and postage). This may reflect a general decline in the number of people requiring documents to be printed and sent to them, increased efficiencies in the use of digital technology, and the greater use of digital communication due to movement restrictions imposed by the COVID-19 pandemic.

The largest increase in non-labour costs in 2019–20, was in relation to litigation costs (120% higher than in 2018–19). The higher litigation costs are primarily the result of the Department of Foreign Affairs and Trade (\$178,289 up from \$38,736 in 2018–19) and Services Australia (which reported no litigation expenses in 2018–19 and \$151,272 in 2019–20). Neither agency provided an explanation in their annual return as to how these costs were incurred or why these costs were higher than in 2018–19. However, it is apparent from the data provided by the AAT that Services Australia was a party to 8 new appeals relating to FOI decisions in 2019–20; 2 as the respondent and 6 as the applicant.

### Average cost per FOI request

The overall average number of staff days to process an FOI request in 2019–20 was 2.9 days,

the same as 2018–19. As in previous years, the average staff days per FOI request differed significantly across agencies, from 0.1 days (Office of the Official Secretary to the Governor-General) to 41 days (Australian Transport Safety Bureau).

The average cost per request received also differed significantly across agencies from \$21 to \$28,721. The overall average cost per request received was \$1,546, an increase of less than 1% on the previous year's average of \$1,539.

As a general rule, the agencies with the highest average cost per request are small agencies which do not receive many FOI requests. As a result, they do not have the opportunity to develop the processing efficiencies of agencies with higher volumes of FOI requests.

However, the Department of Defence, which received 619 FOI requests, and the Department of Industry, Science, Energy and Resources, which received 128 FOI requests both have a high average cost per request. These costs are attributable in part to the high average staff days per request (28.4 days for the Department of Industry, Science, Energy and Resources and 17.8 days for the Department of Defence).

**Table E.18:** Identified non-labour costs of FOI

Costs	2017–18 (\$)	2018–19 (\$)	2019–20 (\$)	% change
General legal advice costs	1,234,631	1,517,125	719,718	–53
Litigation costs	426,145	414,635	911,551	120
<b>Sub-total (legal costs)</b>	<b>1,660,776</b>	<b>1,931,760</b>	<b>1,631,269</b>	<b>–16</b>
General administrative costs	274,532	144,140	136,634	–5
Training	323,958	385,745	168,339	–56
Other	299,029	263,206	242,585	–8
<b>Total</b>	<b>2,558,295</b>	<b>2,724,851</b>	<b>2,178,827</b>	<b>–20</b>

**Table E.19:** Agencies with average cost per FOI request greater than \$10,000

Agency	Requests received	Average cost per request (\$)
Professional Services Review	3	28,721
Australian National Maritime Museum	1	25,757
Australian Transport Safety Bureau	9	21,705
Department of Industry, Science, Energy and Resources	128	20,347
Australian Building and Construction Commission	1	17,407
Murray-Darling Basin Authority	3	13,829
Indigenous Business Australia	5	12,860
Cancer Australia	6	11,543
Director of National Parks	5	11,358
Fair Work Ombudsman	57	11,472
Department of Defence	619	11,287
Minister for Industry, Science and Technology	2	11,041
National Competition Council	2	10,047

## Impact of the IPS on agency resources

Agencies are required to provide information about the costs of meeting their obligations under the IPS.

The total reported cost attributable to compliance with the IPS in 2019–20 was \$1,242,976, nearly 1% less than in 2018–19 (\$1,254,293).

### Staff costs (IPS)

Table E.20 shows the total reported IPS staffing across Australian Government agencies compared to last year.

**Table E.20:** Total IPS staffing

Staffing	2018–19	2019–20	% change
Staff numbers: 75–100% time on IPS matters	31	8	–74
Staff numbers: less than 75% time on IPS matters	323	295	–9
Total staff hours	19,225	19,084	–1
Total staff years	9.6	9.5	–1

**Table E.21:** Estimated staff costs in relation to the IPS in 2019–20

Type of staff*	Staff years	Salary costs	Related costs (60%)	Total staff costs
IPS contact officers	8.8	442,547	663,820	1,106,367
SES	0.1	7,597	11,395	18,992
APS Level 6 and EL 1–2	0.5	38,163	57,245	95,408
APS Levels 1–5	0.2	8,211	12,317	20,528
<b>Total</b>	<b>9.6</b>	<b>496,518</b>	<b>744,778</b>	<b>1,241,296</b>

\* IPS contact officers are officers whose usual duties include IPS work. The other rows cover other officers involved in IPS work.

### Non-labour IPS costs

Reported IPS non-labour costs for all agencies totalled \$1,680 in 2019–20, a 68% decrease when compared with 2018–19. Agencies reported \$1,180 on general administrative costs and one agency reported spending \$500 on general legal advice associated with its IPS.

Only 5 agencies (of the more than 250 agencies subject to the requirement to maintain an IPS entry) reported any expenditure on IPS during 2019–20. No agencies reported expenditure on IPS litigation, IPS training or 'other' IPS expenses.

## Appendix F: Acronyms and abbreviations

Acronym or abbreviation	Expanded term
AAO	Administrative Arrangements Orders
AAT	Administrative Appeals Tribunal
ACAPS	Australian Community Attitudes to Privacy Survey
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
AHRC	Australian Human Rights Commission
AIAC	Association of Information Access Commissioners
AIC Act	<i>Australian Information Commissioner Act 2010</i>
AICmr	Australian Information Commissioner
APP	Australian Privacy Principle
APPA	Asia Pacific Privacy Authorities
APS	Australian Public Service
ATO	Australian Taxation Office
AustLII	Australasian Legal Information Institute
CASA	Civil Aviation Safety Authority
CDR	Consumer Data Right
CIE	Connected information environment
CII	Commissioner-initiated investigations
Data-matching Act	<i>Data-matching Program (Assistance and Tax) Act 1990</i>
DBN	Data breach notification
DHS	Department of Human Services
DRS	Data retention scheme
EDRS	External dispute resolution scheme
EOT	Extension of time
EU	European Union



Acronym or abbreviation	Expanded term
FOI	Freedom of information
FOI Act	<i>Freedom of Information Act 1982</i>
FTE	Full-time equivalent
GPA	Global Privacy Assembly
GST	Goods and Services Tax
HSR	Health and Safety Representatives
IC	Information Commissioner
ICIC	International Conference of Information Commissioners
ICON	Information Contact Officers Network
Information Commissioner	Australian Information Commissioner, within the meaning of the <i>Australian Information Commissioner Act 2010</i>
IPS	Information Publication Scheme
KMP	Key management personnel
MOU	Memorandum of understanding
NDB	Notifiable Data Breach
NEIDM	Non-Employment Income Data Matching
NFBMC	National Facial Biometric Matching Capability
NSW	New South Wales
OAIC	Office of the Australian Information Commissioner
OECD	Organisation for Economic Co-operation and Development
PAA	Privacy Authorities Australia
PAW	Privacy Awareness Week
PAYG	Pay-As-You-Go
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	<i>Public Governance, Performance and Accountability Rule 2014</i>
PIA	Privacy Impact Assessment
PNR	Passenger Name Record
PPN	Privacy Professionals Network
Privacy Act	<i>Privacy Act 1988</i>
SES	Senior Executive Service

Acronym or abbreviation	Expanded term
SME	Small and medium enterprises
TFN	Tax file number
TIYDL	This Is Your Digital Life
USI	Unique Student Identifiers
WHS	Work health and safety

## Appendix G: Correction of material errors

There is one error to be corrected in the *Office of the Australian Information Commissioner Annual Report 2018–19*.

### **Page 46 – Performance measure 2.3.2**

The sentence: ‘Only one FOI-related CII was opened in 2018–19 and the eight-month period had not elapsed by 30 June 2019.’ should read as follows: ‘No FOI-related CIIs were opened during 2018–19.’

## Appendix H: List of requirements

PGPA Rule reference	Description	Requirement	Part of report
<b>17AD(g)</b>	<b>Letter of transmittal</b>		
17AI	A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with section 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	1
<b>17AD(h)</b>	<b>Aids to access</b>		
17AJ(a)	Table of contents.	Mandatory	2
17AJ(b)	Alphabetical index.	Mandatory	171
17AJ(c)	Glossary of abbreviations and acronyms.	Mandatory	162
17AJ(d)	List of requirements.	Mandatory	166
17AJ(e)	Details of contact officer.	Mandatory	Copyright page
17AJ(f)	Entity's website address.	Mandatory	Copyright page
17AJ(g)	Electronic address of report.	Mandatory	Copyright page
<b>17AD(a)</b>	<b>Review by accountable authority</b>		
17AD(a)	A review by the accountable authority of the entity.	Mandatory	8–10
<b>17AD(b)</b>	<b>Overview of the entity</b>		
17AE(1)(a)(i)	A description of the role and functions of the entity.	Mandatory	6
17AE(1)(a)(ii)	A description of the organisational structure of the entity.	Mandatory	16
17AE(1)(a)(iii)	A description of the outcomes and programmes administered by the entity.	Mandatory	21–76
17AE(1)(a)(iv)	A description of the purposes of the entity as included in corporate plan.	Mandatory	7
17AE(1)(aa)(i)	Name of the accountable authority or each member of the accountable authority.	Mandatory	16–18
17AE(1)(aa)(ii)	Position of the accountable authority or each member of the accountable authority.	Mandatory	16–18
17AE(1)(aa)(iii)	Period as the accountable authority or member of the accountable authority within the reporting period.	Mandatory	16–18
17AE(1)(b)	An outline of the structure of the portfolio of the entity.	Portfolio departments – mandatory	6, 16–18, 78
17AE(2)	Where the outcomes and programs administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change.	If applicable, Mandatory	N/A

PGPA Rule reference	Description	Requirement	Part of report
<b>17AD(c)</b>	<b>Report on the Performance of the entity</b>		
	<i>Annual performance statements</i>		
17AD(c)(i); 16F	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule.	Mandatory	21–76
17AD(c)(ii)	<i>Report on financial performance</i>		
17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory	87–125
17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	128–129
17AF(2)	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	If applicable, mandatory	87–125 128–129
<b>17AD(d)</b>	<b>Management and accountability</b>		
	<i>Corporate governance</i>		
17AG(2)(a)	Information on compliance with section 10 (fraud systems).	Mandatory	79
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	1
17AG(2)(b)(ii)	A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place.	Mandatory	1
17AG(2)(b)(iii)	A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity.	Mandatory	1
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	78
17AG(2)(d) – (e)	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to non-compliance with Finance law and action taken to remedy non-compliance.	If applicable, mandatory	N/A
	<i>Audit committee</i>		
17AG(2A)(a)	A direct electronic address of the charter determining the functions of the entity's audit committee.	Mandatory	79
17AG(2A)(b)	The name of each member of the entity's audit committee.	Mandatory	80
17AG(2A)(c)	The qualifications, knowledge, skills or experience of each member of the entity's audit committee.	Mandatory	80
17AG(2A)(d)	Information about the attendance of each member of the entity's audit committee at committee meetings.	Mandatory	80
17AG(2A)(e)	The remuneration of each member of the entity's audit committee.	Mandatory	80

PGPA Rule reference	Description	Requirement	Part of report
<i>External scrutiny</i>			
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	N/A
17AG(3)(a)	Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity.	If applicable, mandatory	N/A
17AG(3)(b)	Information on any reports on operations of the entity by the Auditor-General (other than report under section 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, mandatory	N/A
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, mandatory	N/A
<i>Management of human resources</i>			
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	81–84
17AG(4)(aa)	Statistics on the entity's employees on an ongoing and non-ongoing basis, including the following: (a) statistics on full-time employees; (b) statistics on part-time employees; (c) statistics on gender; (d) statistics on staff location.	Mandatory	82
17AG(4)(b)	Statistics on the entity's APS employees on an ongoing and non-ongoing basis; including the following: • Statistics on staffing classification level; • Statistics on full-time employees; • Statistics on part-time employees; • Statistics on gender; • Statistics on staff location; • Statistics on employees who identify as Indigenous.	Mandatory	82
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the <i>Public Service Act 1999</i> .	Mandatory	84
17AG(4)(c)(i)	Information on the number of SES and non-SES employees covered by agreements etc identified in paragraph 17AG(4)(c).	Mandatory	84
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	82
17AG(4)(c)(iii)	A description of non-salary benefits provided to employees.	Mandatory	83–84
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	If applicable, mandatory	N/A
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, mandatory	N/A
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, mandatory	N/A
17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, mandatory	N/A

PGPA Rule reference	Description	Requirement	Part of report
<i>Assets management</i>			
17AG(5)	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities.	If applicable, mandatory	N/A
<i>Purchasing</i>			
17AG(6)	An assessment of entity performance against the <i>Commonwealth Procurement Rules</i> .	Mandatory	85
<i>Consultants</i>			
17AG(7)(a)	A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	85
17AG(7)(b)	A statement that  <i>"During [reporting period], [specified number] new consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]"</i>	Mandatory	86
17AG(7)(c)	A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged.	Mandatory	85
17AG(7)(d)	A statement that  <i>"Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website."</i>	Mandatory	85
<i>Australian National Audit Office access clauses</i>			
17AG(8)	If an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor's premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, mandatory	N/A
<i>Exempt contracts</i>			
17AG(9)	If an entity entered into a contract or there is a standing offer with a value greater than \$10 000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	If applicable, mandatory	N/A

PGPA Rule reference	Description	Requirement	Part of report
<i>Small business</i>			
17AG(10)(a)	A statement that  “[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance’s website.”	Mandatory	85
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	85
17AG(10)(c)	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that  “[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.”	If applicable, mandatory	85
<i>Financial statements</i>			
17AD(e)	Inclusion of the annual financial statements in accordance with subsection 43(4) of the Act.	Mandatory	87–125
<i>Executive remuneration</i>			
17AD(da)	Information about executive remuneration in accordance with Subdivision C of Division 3A of Part 2-3 of the Rule.	Mandatory	130–131
17AD(f)	<i>Other mandatory information</i>		
17AH(1)(a)(i)	If the entity conducted advertising campaigns, a statement that  “During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity’s website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance’s website.”	If applicable, mandatory	86
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, Mandatory	N/A
17AH(1)(b)	A statement that  “Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity’s website].”	If applicable, mandatory	N/A
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	86
17AH(1)(d)	Website reference to where the entity’s Information Publication Scheme statement pursuant to Part II of FOI Act can be found.	Mandatory	86
17AH(1)(e)	Correction of material errors in previous annual report.	If applicable, mandatory	165
17AH(2)	Information required by other legislation.	Mandatory	134–161



## Index

### A

abbreviations 162–4  
 acronyms 162–4  
 Administrative Appeals Tribunal (AAT) reviews 156–8  
 advertising campaigns 86  
 agency resource statement 128–9  
 airline industry  
     collection of passport information 53–4  
     Passenger Name Record data 49  
 annual performance statement 22–6  
 Annual Report, submitted to Attorney-General 1  
 Asia Pacific Privacy Authorities Forum 27, 29  
 Association of Information Access Commissioners 72  
 Attorney-General  
     Annual Report submitted to 1  
     portfolio structure 78  
 Audit Committee 79–80  
 Australian Capital Territory (ACT) Government  
     memorandum of understanding 132  
     privacy assessments 48  
 Australian Community Attitudes to Privacy Survey 32  
 Australian Human Rights Commission (AHRC),  
     corporate services provided by 79  
 Australian Information Commissioner *see* Falk, Angelene  
 Australian Privacy Commissioner *see* Falk, Angelene  
 Australian Privacy Principles 34

### B

backlog project 37–8

### C

Chief Financial Officer's statement 90  
 Civil Aviation Safety Authority, IC review 45  
 codes of practice for digital platforms 30

Commissioner-initiated investigations 40–1, 46–7  
 Commissioner's Review 8–10  
 community awareness of online privacy 30–2,  
     54–5, 66  
 compensation payments in privacy complaints 135  
 complaints *see* privacy complaints  
 consultants engaged 85  
 Consultation Forum 84  
 Consumer Data Right (CDR) scheme  
     Commissioner's Review 9  
     implementation of 22, 59–61  
     Regulatory Action Policy 60  
 corporate governance 78–86  
 Corporate Plan for 2019–20 8, 22–6  
 correction of material errors 165  
 COVID Taskforce 22  
 COVID-19 awareness campaign 58  
 COVID-19 National Privacy Team 27, 72  
 COVIDSafe app system 8, 22, 48  
 culture of OAIC 81–4

### D

data analysis for enterprise risks 75  
 data-matching activities  
     assessments of 137  
     best practice in 50  
 Department of Home Affairs  
     IC review 45  
     memorandums of understanding 133  
     use of passenger name data 49  
 digital campaigns 57  
 digital health privacy assessments 48, 136  
 Digital Platforms Inquiry, response to 9  
 disability reporting 86  
 Diversity Committee 84  
 Drayton, Melanie 18

**E**

ecologically supportable development 86  
 e-learning courses 56–7  
 employee engagement 73  
 employment statistics 82  
 enabling legislation 78  
 environmental performance 86  
 executive remuneration 130–1  
 exemption use in FOI requests 146–7  
 external dispute resolution schemes 37  
 external scrutiny 80

**F**

Facebook, court proceedings against 22, 31, 41  
 Falk, Angelene 16  
     Annual Report submitted by 1  
     Commissioner's Review 8–10  
     determinations by 39  
     Financial Statements submitted by 90  
     Information Commissioner (IC) reviews 153–6  
     investigations initiated by 40–1, 46–7  
     speech at Right to Know Day 67  
 Federal Court proceedings 22, 31, 41  
 financial statements 86–125  
 fraud control plan 79  
 Freedom of Information 51–2  
     applications for review of decisions 10, 15, 22, 44–5, 62, 152–3  
     complaints and enquiries 14, 46, 62  
     compliance resources 52  
     costs of decisions 158–61  
     enquiries by issue 54  
     impact on agency resources 158–61  
     performance on 22  
     processing statistics 63, 138–61  
     processing times 64–5  
     revised guidelines 52  
     vexatious applicant declarations 66

**G**

Global Privacy Assembly 27–8, 71  
 Global Privacy Enforcement Network 29

governance 78–86  
 government-held information, proactive release of 62–7  
*Guide to health privacy* 22

**H**

Hampton, Elizabeth 17  
 Hargreaves, Donna 80  
 health privacy campaign 57  
 Holt, Rachel 80

**I**

independent auditor's report 88–9  
 industry sector, privacy complaints grouped by 36  
 Information Access Study 2019 67  
 Information Commissioner *see* Falk, Angelene  
 Information Commissioner (IC) reviews 153–6  
 Information Contact Officers Network 70  
 information management framework 65  
 Information Matters e-newsletter 57  
 Information Publication Scheme 66, 86, 161  
 international privacy networks 27–9, 71

**L**

learning and development *see* training  
 legislation, influencing development of 27–9, 33–4  
 list of requirements 166–70

**M**

Mackay, Ruth 18, 80  
 market research 86  
 media enquiries 59  
 media monitoring 69  
 memorandums of understanding 132–3  
 monitoring, guidance and advice 47

**N**

Notifiable Data Breaches scheme 41–2  
     Commissioner's Review 9  
     year at a glance 13

## O

### Office of the Australian Information Commissioner (OAIC)

- Consultation Forum 84
- corporate governance 78–86
- culture of 81–4
- employee engagement 73
- monitoring, guidance and advice by 47–50
- new website 54–5
- recruitment policies 74
- role of 6
- Senior Executive staff 17–19, 78, 84
- speaking engagements 58
- staff of 73–4, 81–4
- statutory powers of 68–75
- structure of 16
- year at a glance 12–15
- online privacy protection 29–32
- online shopping risks campaign 57
- open banking implementation 59–60
- outcome structure 6
- overview 5

## P

- Passenger Name Record data 49
- people and culture, OAIC 81–4
- performance, annual statement of 22–6
- personal information collection and handling 33–61, 140–3, 150–2
- ‘practical refusal reasons’ for FOI requests 146–8
- Privacy Act
  - legislation to amend 28
  - review of 9
- privacy advice 51–2
- privacy assessments 48–9, 136
- Privacy Authorities Australia 72
- Privacy Awareness Week campaign 22, 31, 58
- privacy breach notifications 41
- Privacy Commissioner *see* Falk, Angelene
- privacy complaints
  - handling mechanism 61
  - numbers over time 10
  - performance 22

- resolving 35–9
- statistics 134–5
- year at a glance 12–13
- privacy enquiries
  - numbers dealt with 52–3
  - performance 22
  - year at a glance 13
- Privacy in a pandemic* webinar 58
- Privacy in Practice* e-learning course 56
- Privacy Professionals Network 70
- Privacy Safeguard Guidelines 60
- privacy statistics 134–7
- proactive publication of government-held information 65–6
- procurement policies 85
- professional membership assistance 83–4
- professional skills development 83
- program framework 6
- public information service 52
- purpose of OAIC 7

## R

- recruitment policies 74
- regulatory activities and functions
  - Commissioner’s Review 9–10
  - contemporary approach to 68–75
  - online protections 30–1
  - role in 7
- Right to Know Day 22, 67
- risk management framework 78

## S

- Senior Executive staff 17–19, 78, 84
- small business, support for 85
- social media, Commission use of 55
- Solomon, Andrew 18, 80
- speaking engagements 58
- staff of OAIC
  - organisational culture 81–4
  - Senior Executive staff 17–19, 78
  - statistics 73–4
- stakeholder survey 70
- Stevens, David 18

**T**

'Talking about performance' scheme 83  
telecommunications service providers, privacy  
assessment 51  
training  
    e-learning courses 56–8  
    e-training employee completion rates 74  
    for employees 83  
    professional skills development 83  
trust and confidence building 10

**U**

*Undertaking a Privacy Impact Assessment* e-learning  
course 57  
Unique Student Identifiers 48

**W**

work health and safety 84  
workplace diversity 84  
workplace relations 84

**Y**

year at a glance 12–15





**Australian Government**

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**Office of the Australian  
Information Commissioner**

OAIC Annual Report 2019–20

1300 363 992

[enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

[@OAICgov](https://twitter.com/OAICgov)

**OAIC**



Australian Government  
Office of the Australian  
Information Commissioner

# Office of the Australian Information Commissioner

**Annual Report 2020–21**



OAIC





# Office of the Australian Information Commissioner

Annual Report 2020–21



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**Contact**

Mail: Director, Strategic Communications  
Office of the Australian Information Commissioner  
GPO Box 5218  
Sydney, NSW 2001

Online: [oaic.gov.au/enquiry](https://oaic.gov.au/enquiry)

Website: [www.oaic.gov.au](https://www.oaic.gov.au)

Twitter: @OAICgov

Phone: 1300 363 992

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**Acknowledgement of Country**

We acknowledge the traditional custodians of Australia and their continuing connection to land, sea and community. We pay our respects to the people, the cultures and the elders past, present and emerging.





**Senator the Hon Michaelia Cash**

Attorney-General  
 Parliament House  
 Canberra ACT 2600

Dear Attorney-General

I am pleased to provide the Office of the Australian Information Commissioner's (OAIC's) Annual Report 2020–21 for the year ending 30 June 2021.

This report has been prepared for the purposes of s 46 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which requires that I prepare and provide an annual report to you for presentation to the Parliament.

Section 30 of the *Australian Information Commissioner Act 2010* (AIC Act) also requires the Information Commissioner to prepare an annual report on the OAIC's operations, including a report on freedom of information matters (defined in s 31 of the AIC Act) and privacy matters (defined in s 32 of the AIC Act). The freedom of information matters include a summary of the data collected from Australian Government ministers and agencies in relation to activities under the *Freedom of Information Act 1982*.

I certify that the OAIC has prepared a fraud risk assessment and fraud control plan. We also have a number of appropriate fraud prevention, detection, investigation, reporting and data collection mechanisms in place. The OAIC has taken all reasonable measures to minimise the incidence of fraud. I certify that this report has been prepared in line with the Public Governance, Performance and Accountability Rule 2014.

Yours sincerely

**Angelene Falk**

Australian Information Commissioner  
 Privacy Commissioner  
 23 September 2021

.....

## 2

## Contents

Part 1: Overview.....	5
About the OAIC .....	6
Commissioner's review.....	8
Our year at a glance.....	10
Our structure .....	14
Part 2: Performance .....	17
Our annual performance statement .....	18
Strategic Priority 1.....	23
Strategic Priority 2.....	29
Strategic Priority 3.....	54
Strategic Priority 4.....	58
Part 3: Management and accountability .....	69
Corporate governance .....	70
External scrutiny .....	71
People and Culture .....	73
Procurement .....	77
Other requirements .....	79

Part 4: Financial statements.....	81
Statement of comprehensive income .....	85
Statement of financial position .....	87
Statement of changes in equity .....	89
Cash flow statement.....	91
Overview .....	93
Financial performance .....	95
Financial position.....	100
Funding .....	109
People and relationships.....	111
Managing uncertainties .....	114
Other information .....	117
Part 5: Appendices .....	119
Appendix A: Agency resource statement and resources for outcomes .....	120
Appendix B: Executive remuneration.....	122
Appendix C: Memorandums of understanding.....	124
Appendix D: Privacy statistics .....	126
Appendix E: FOI statistics.....	130
Appendix F: Acronyms and shortened forms.....	156
Appendix G: Correction of material errors .....	159
Appendix H: List of requirements .....	160
Index .....	167







## Part 1

### Overview

About the OAIC .....	6
Commissioner's review .....	8
Our year at a glance .....	10
Our structure .....	14

## About the OAIC

The Office of the Australian Information Commissioner (OAIC) is an independent statutory agency within the Attorney-General's portfolio, established under the *Australian Information Commissioner Act 2010*.

Our key role is to meet the needs of the Australian community in relation to the regulation of privacy and freedom of information. We do this by:

- ensuring proper handling of personal information under the *Privacy Act 1988* and other legislation
- protecting the public's right of access to documents under the *Freedom of Information Act 1982* (FOI Act)
- performing strategic functions relating to information management within the Australian Government under the *Australian Information Commissioner Act 2010* (AIC Act).

## Outcome and program structure

Our Portfolio Budget Statement describes the OAIC's outcome and program framework.

Outcome	Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of information commissioner, freedom of information and privacy functions.
Program 1.1	Complaint handling, compliance and monitoring, and education and promotion.

Our annual performance statement details our activities and key deliverables and measures our performance against our Portfolio Budget Statement targets and the strategic priorities set out in the *OAIC Corporate Plan 2020–21*:

- advance online privacy protections for Australians
- influence and uphold privacy and information access rights frameworks
- encourage and support proactive release of government-held information
- take a contemporary approach to regulation.



## Purpose

Our purpose is to promote and uphold privacy and information access rights.

We do this by:

- making sure that Australian Government agencies and Australian Privacy Principles (APP) entities comply with the Privacy Act and other laws when handling personal information
- protecting the public's right of access to documents under the FOI Act
- carrying out strategic information management functions within the Australian Government under the AIC Act.

Our regulatory activities include:

- conducting investigations
- handling complaints
- reviewing decisions made under the FOI Act
- monitoring agency administration
- providing advice to the public, organisations and agencies.

## Commissioner's review

In a year dominated by our ongoing response to COVID-19, the OAIC has worked to ensure access to information and privacy protections continue to be upheld. Information sharing by government and the use of personal information to help address the public health risks associated with the pandemic has been a hallmark of the past 12 months. The government and business response to community expectations for information sharing and strong privacy protections in areas of higher risk has set important benchmarks for best practice in privacy and information access.

The OAIC has joined with our domestic and international counterparts to highlight the need to maintain privacy and information access frameworks during the pandemic, through proportionate and pragmatic public health responses, and the proactive release of information.

### Advancing our strategic priorities

As a contemporary regulator, we seek to respond to government and community public expectations when exercising our regulatory responsibilities and powers under the *Privacy Act 1988* and the *Freedom of Information Act 1982* (FOI Act).

Our compliance and enforcement activities hold organisations to account through determinations and other regulatory action. In 2020–21, we issued a record 17 determinations in relation to complaints alleging breaches of the Australian Privacy Principles, providing guidance to regulated entities around the interpretation of individual principles and establishing important precedents.

We finalised 10 privacy Commissioner-initiated investigations (CIIs) during the reporting period, and

significantly advanced our joint investigation with the UK Information Commissioner into Clearview AI Inc. over the use of 'scraped' data and biometrics for its facial recognition app. Our CII into the Department of Home Affairs' compliance with statutory timeframes for processing FOI requests for non-personal information resulted in the agency agreeing to implement all our recommendations.

In October 2020, we established our Regulatory Action Committee, a new internal governance mechanism to assist the OAIC in assessing regulatory options for responding to significant and emerging privacy risks.

Our work also shapes the privacy and access to information landscape through detailed submissions and policy advice to the Australian Government and others. In 2020–21, we made 21 submissions and 50 bill scrutiny comments across both privacy and FOI. This includes our submission to the landmark review of the Privacy Act led by the Attorney-General's Department. Among our recommendations is the need for a new standard to ensure that the collection, use and disclosure of personal information is fair and reasonable.

We continue to influence policy and reform through domestic and international engagement. I had the privilege of leading the adoption of 2 resolutions at the Global Privacy Assembly conference in October 2021 focused on facial recognition and emerging privacy issues. In June 2021, the International Conference of Information Commissioners voted unanimously to adopt the resolution authored by the OAIC in support of proactive publication of information relating to the COVID-19 pandemic. In 2020–21, we led a highly successful Privacy Awareness Week (PAW), signing up a record number of supporters. We also coordinated national campaigns across Australian jurisdictions for both PAW and International Access to Information Day.

## Delivering our regulatory functions

The OAIC's work to deliver our core services to the Australian community has continued through the pandemic, as applications for Information Commissioner (IC) reviews increased by 15% to 1,224 and privacy complaints fell by 7% to 2,474. I am pleased to report that OAIC staff finalised 94% of privacy complaints within 12 months, against a target of 80%. We also closed 1,018 IC reviews, an increase of 23% compared to the previous financial year. Despite this significant improvement, resourcing issues means a gap between incoming FOI work and finalisation rates remains. The appointment of a new FOI Commissioner announced in the May Budget will assist our capacity to manage this growing workload.

COVID-19 was a key theme of new OAIC guidance and advice to drive best practice among agencies and organisations, including harmonising contact tracing orders and privacy protections in relation to vaccinations. We also released two COVIDSafe reports and the first of 5 COVIDSafe assessments in 2020–21.

## Significant milestones

The Consumer Data Right celebrated its first year of operation in the banking sector on 30 June 2021. This important reform is empowering consumers to take greater control of their data to help them find products and services better suited to their needs. Alongside our co-regulator, the Australian Competition and Consumer Commission, the OAIC is working to embed and enforce the privacy safeguards built into the system and to advise as the Consumer Data Right is applied to additional sectors.

The Notifiable Data Breaches scheme has now been in operation for 3 years, and the OAIC has resolved

more than 3,000 data breach notifications since it began in February 2018. The scheme provides greater transparency to consumers whose data is caught up in a breach and keeps organisations accountable for their obligations to protect personal information. As it matures, we see clear trends: malicious or criminal attacks are the leading source of data breaches, followed by human error. Our regular reporting of this data highlights emerging issues and areas for attention by regulated entities.

We also marked the 10th anniversary of the OAIC in November 2020. The creation of the agency elevated the role of information management within the Australian Government, integrating freedom of information, privacy protection and information policy advice functions. Among our many achievements, during the past decade we resolved more than 24,000 privacy complaints and almost 800 FOI complaints, completed almost 6,000 IC reviews and answered more than 212,000 enquiries.

These achievements are the work of our committed and expert staff, who have maintained their efforts to serve the Australian community throughout this challenging 12-month period. In the year ahead, we will continue to employ our regulatory tools and capabilities to build public trust and confidence in access to government-held information and the protection of personal information, as we support proactive publication and help to develop a privacy framework with the protections and flexibility needed to support a thriving digital economy.



**Angelene Falk**

Australian Information Commissioner  
Privacy Commissioner

23 September 2021

## 10

## Our year at a glance

## Privacy complaints

We **received**

2020–21

2019–20

↓ 7% fewer

2,474

2,673

privacy complaints

We **finalised**

2020–21

2019–20

↓ 36% fewer

2,151

3,366

privacy complaints\*

94%

of privacy complaints were closed within  
12 months against a **target of 80%**

up from 2019–20 by

↑ 7%

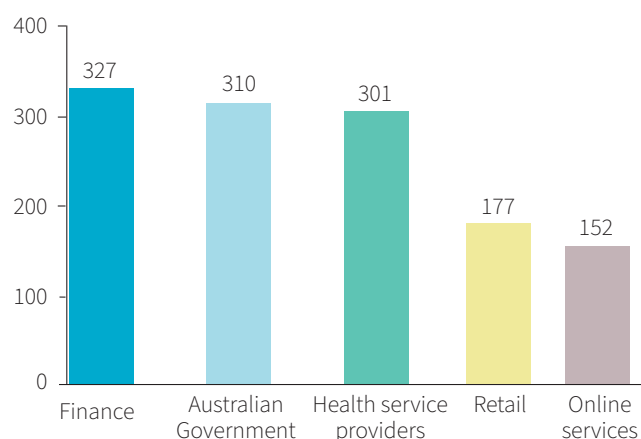
Average time taken to finalise a  
privacy complaint

4.4 months

*We made a record  
17 determinations on  
privacy complaints, up  
from 4 in the previous  
reporting period*

\* In 2019–20, we completed a backlog project which increased the finalisation figures so this is not a like-for-like comparison.

Top 5 sectors by privacy complaints received



## Privacy enquiries

We **handled**

**11,647**

privacy enquiries

↓ **22%**

**decrease** from 2019–20



phone

**7,020**



written

**4,625**



in person

**2**

## Notifiable Data Breaches scheme

We **received**

↓ **7% fewer**

notifications under the Notifiable  
Data Breaches (NDB) scheme

2020–21

**975**

2019–20

**1,050**

**80%**



of NDBs were finalised within 60 days  
against a **target of 80%**

up from 2019–20 by

↑ **18%**

**Average time** taken to finalise a data  
breach notification

**62 days**



## Privacy Awareness Week 2021

**629 supporters**

joined the OAIC campaign

up from 2019–20 by

↑ **15%**

## 12

## Our year at a glance

## FOI enquiries

We **handled****1,824**

FOI enquiries

↓ 21%

decrease from 2019–20



phone

1,106



written

718

## FOI complaints

We **received**

↑ 39% more

FOI complaints

2020–21

**151**

2019–20

**109**We **finalised**

↑ 145% more

FOI complaints

2020–21

**174**

2019–20

**71****82%** of FOI complaints were finalised within  
12 months against a **target of 80%**

up from 2019–20 by

↑ 30%

**Average time** taken to finalise an  
FOI complaint

6.8 months



## Information Commissioner (IC) reviews

We **received**

↑ 15% more

applications for IC reviews of FOI decisions

2020–21

1,224

2019–20

1,066

We **finalised**

↑ 23% more

IC reviews

2020–21

1,018

2019–20

829

73% 

of applications for IC reviews were finalised within 12 months against a **target of 80%**

up from 2019–20 by

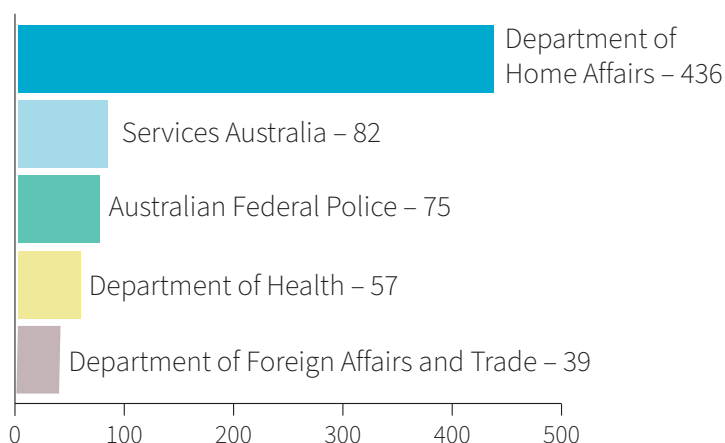
↑ 1%

**Average time** taken to finalise an IC review

8.3 months



### Top 5 agencies involved in IC reviews



*We finalised 57% of IC reviews within 120 days*

## Our structure

The OAIC is headed by the Australian Information Commissioner, a statutory officer appointed by the Governor-General. The Commissioner has a range of powers and responsibilities outlined in the AIC Act, and also exercises powers under the FOI Act, the Privacy Act and other privacy-related legislation.

The Australian Information Commissioner is the agency head accountable for strategic oversight and the OAIC's regulatory, strategic, advisory and dispute resolution functions, as well as financial and governance reporting.

Angelene Falk was appointed by the Governor-General to the roles of Australian Information Commissioner and Privacy Commissioner on 16 August 2018 for a 3-year term. She was acting Australian Information Commissioner and Privacy Commissioner from 24 March 2018 to 15 August 2018.

### Angelene Falk

Angelene Falk has held senior positions in the OAIC since 2012, including serving as Deputy Commissioner from 2016 to March 2018. Over the past decade, she has worked extensively with Australian Government agencies, across the private sector and internationally, at the forefront of addressing regulatory challenges and opportunities presented by rapidly evolving technology and potential uses of data. Her experience extends across industries and subject matter, including data breach prevention and management, data sharing, credit reporting, digital health and access to information.

Commissioner Angelene Falk is a member of the National Data Advisory Council, and sits on the Executive Committee of the Global Privacy Assembly (GPA), chairing the GPA's Strategic Direction Sub-Committee. She holds a Bachelor of Laws with Honours and a Bachelor of Arts from Monash University and a Diploma in Intellectual Property Law from Melbourne University.

### Support to the Commissioner

The Commissioner is supported by a Deputy Commissioner, 3 Assistant Commissioners and expert staff, working within the Dispute Resolution, Regulation and Strategy, and Corporate branches, and the FOI Regulatory Group.

The Dispute Resolution branch is responsible for privacy dispute resolution, managing privacy enquiries, resolving and investigating privacy complaints, and administering the Notifiable Data Breaches scheme. This includes resolving privacy complaints at the earliest opportunity by assisting parties to reach settlement through conciliation; investigating more complex complaints and providing outcomes; and supporting the Commissioner to make determinations, which may include declarations about entities taking remedial action. The branch deals with entities to ensure that individuals are notified of eligible data breaches so they can act to protect their personal information. It also conducts CII into particular acts and practices which may result in further regulatory action.

The Regulation and Strategy branch is responsible for providing strategic policy advice and guidance to individuals, government and business. This includes examining legislation and other proposals that may have an impact on privacy and managing the program of work under the OAIC's International Strategy. It also undertakes proactive regulatory activities by auditing privacy practices in industry and government agencies. The branch is responsible for regulating privacy safeguards under the Consumer Data Right system and monitoring the privacy aspects of the COVIDSafe System.

The FOI Regulatory Group is responsible for undertaking IC reviews, monitoring, investigating and reporting on compliance through FOI complaints and Commissioner-initiated FOI investigations, deciding applications for vexatious applicant declarations and extensions of time, collecting information and statistics from agencies and ministers about FOI matters, and providing

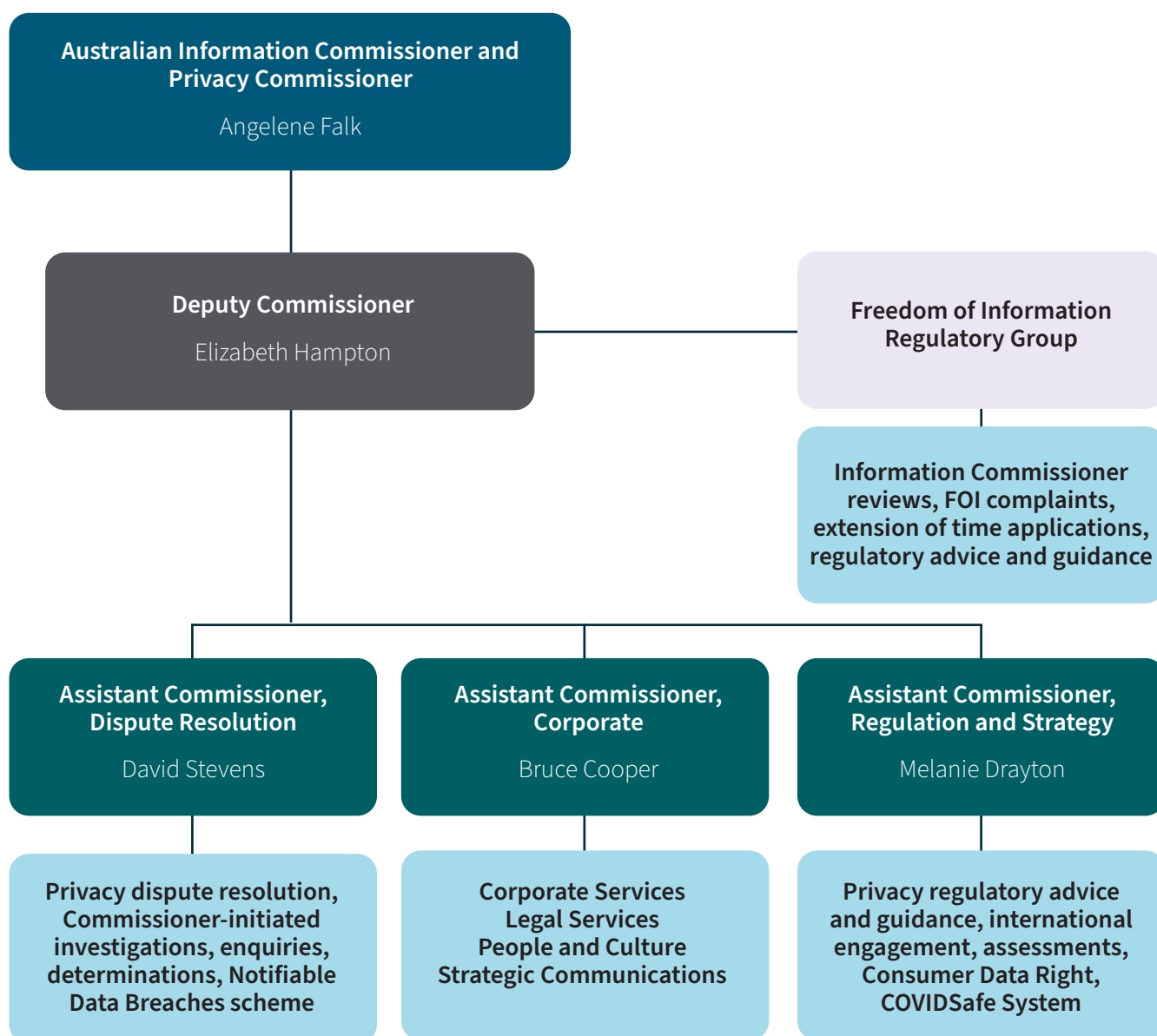


advice and guidance on FOI and information access related matters.

The Corporate branch includes legal services, strategic communications and corporate services with people and culture, governance, finance and information management services functions. The Corporate Branch coordinates the OAIC's identification, assessment and mitigation of

strategic and operational risks, and manages the security posture of the office, including compliance with the Protective Security Policy Framework. During 2020–21, the Corporate Branch has worked with a new shared services delivery partner to commence transition of the human resources and finance functions, in line with government's shared services policy.

**Figure 1.1: OAIC corporate structure**





## Part 2

### Performance

Our annual performance statement .....	18
Strategic Priority 1 .....	23
Strategic Priority 2 .....	29
Strategic Priority 3 .....	54
Strategic Priority 4 .....	58

## Our annual performance statement

### Introduction

I, Angelene Falk, as the accountable authority of the Office of the Australian Information Commissioner (OAIC), present the 2020–21 annual performance statement of the OAIC, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, this annual performance statement is based on properly maintained records, accurately reflects the performance of the entity, and complies with subsection 39(2) of the PGPA Act.

### Overall performance

During this reporting period, the OAIC delivered on our purpose to promote and uphold privacy and information access rights. We measure our success against the performance indicators outlined in the *OAIC Corporate Plan 2020–21*, which features

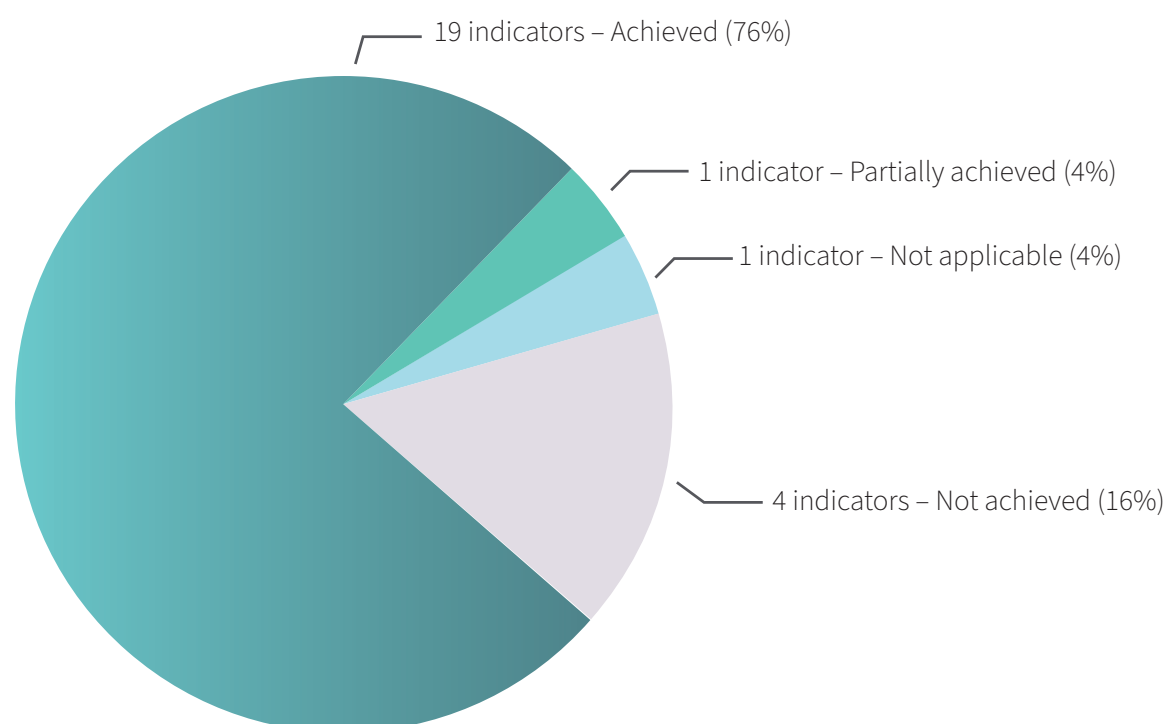
25 indicators grouped under 4 strategic priorities. In 2020–21 we achieved 19 out of our 25 indicators. For more information, see Table 2.1: Breakdown of indicators by status.

### Highlights

Among the highlights of our performance in 2020–21:

- We completed 1,018 Information Commissioner (IC) reviews (compared to 829 in the previous year), finalising more than half within 120 days.
- We finalised 174 freedom of information (FOI) complaints, an increase of 145% on the previous year.
- We completed a Commissioner-initiated investigation (CII) into FOI processes at the Department of Home Affairs, making

**Figure 2.1: OAIC indicators by status**



recommendations which have been accepted and are being implemented by Home Affairs.

- We conducted a joint privacy investigation with the UK Information Commissioner's Office (ICO) into Clearview AI Inc., with findings to be published in the next reporting period.
- We made 17 privacy determinations, more than in any previous financial year.
- We closed 2,151 privacy complaints, resolving 94% within 12 months.
- We commenced 4 COVIDSafe privacy assessments and completed one assessment of the National COVIDSafe Data Store Access Controls.
- We provided advice on privacy impact assessments (PIAs) related to the COVID-19 vaccination rollout, and published guidance for employers and employees.
- We provided advice to government on its review of the *Privacy Act 1988* and in relation to the proposed Online Privacy Code legislation.
- We consulted stakeholders as part of our reviews of the National Health (Privacy) Rules 2018 and Data-matching Program (Assistance and Tax) Guidelines 1994.
- We worked with the Digital Transformation Agency to ensure that privacy is at the centre of new legislation that will enable the expansion of the Digital Identity system.
- We led our biggest Privacy Awareness Week campaign ever, enlisting 629 supporters, and grew our Information Contact Officers Network by 20%, from 573 to 685 members.
- We engaged proactively with domestic and international regulators through a range of forums, working groups and other collaborative mechanisms, including through the Commissioner's role on the Executive Committee of the Global Privacy Assembly (GPA).
- We chaired the Global Privacy Assembly Strategic Direction Sub-Committee, co-chaired its Digital Citizen and Consumer Working Group, and authored 2 resolutions adopted at the GPA's annual conference, including one on facial recognition technology.
- We convened a National COVID-19 Privacy Team with state and territory privacy regulators which met regularly throughout the year to respond to proposals with national implications.
- We led work for the International Conference of Information Commissioners (ICIC) that resulted in publication of a joint statement supporting the proactive publication of information relating to the COVID-19 pandemic.

## Results

Our performance is measured against the 25 indicators in the *OAIC Corporate Plan 2020–21*.

**Table 2.1: Breakdown of indicators by status**

Indicator	Measure	Target	Status
1.1	Australians' personal information is protected wherever it flows	(1) The OAIC supports mechanisms that facilitate international data flows while protecting personal information  (2) The OAIC engages in international regulatory compliance and enforcement	Qualitatively and quantitatively demonstrated  Achieved
1.2	Australia's privacy frameworks are fit for purpose in the digital age	The OAIC provides policy advice to the Australian government	Qualitatively and quantitatively demonstrated  Achieved
1.3	The OAIC is a leader in the global privacy community to strengthen protection of Australians' personal information	The OAIC has a leadership role in key international forums	Qualitatively demonstrated  Achieved
1.4	The OAIC engages with stakeholders in the development of online privacy protections	Views of stakeholders have been sought and considered	Qualitatively demonstrated  Achieved
1.5	A code of practice for digital platforms increases the privacy protection of Australians in the online environment	Code of practice for digital platforms is developed	Code is registered  Not applicable <sup>1</sup>
2.1	The OAIC identifies, scrutinises and advances policy and legislative reform proposals	The OAIC influences policy and law makers to support privacy and information rights	Number of submissions published and number of times bill scrutiny tasks completed  Achieved
2.2	Respond to privacy and information access enquiries from the public	Time taken to finalise written enquiries	90% of written enquiries are finalised within 10 working days*  Not achieved
2.3	Resolve privacy complaints	Time taken to finalise privacy complaints	80% of privacy complaints are finalised within 12 months*  Achieved

<sup>1</sup> Indicator 1.5 was 'Not applicable' because the legislation to support the Online Privacy Code was delayed.

Indicator	Measure	Target	Status
2.4	Ensure timely handling of data breach notifications	(1) Time taken to resolve Notifiable Data Breaches (NDBs) 80% of NDBs are finalised within 60 days* (2) Time taken to resolve My Health Record notifications 80% of My Health Record notifications are finalised within 60 days*	Partially achieved
2.5	Strategic assessment and advice provided to the Commissioner in relation to all significant privacy risks	The Commissioner receives strategic advice regarding the appropriate regulatory response to significant privacy risks	Achieved
2.6	Conduct Commissioner-initiated investigations	Time taken to finalise privacy and FOI CIIIs	Not achieved
2.7	Provide merits review of FOI decisions made by agencies	Time taken to finalise Information Commissioner reviews	Not achieved
2.8	Improve agencies' processes for managing FOI requests	(1) Time taken to resolve FOI complaints 80% of FOI complaints are finalised within 12 months* (2) Agencies accept and implement recommendations made following complaint investigations 90% of recommendations made are accepted	Achieved
2.9	The OAIC promotes awareness of privacy and access to information	The OAIC leads campaigns such as International Access to Information Day and Privacy Awareness Week	Achieved
2.10	The OAIC promotes awareness of CDR privacy rights	Education and awareness materials are developed and promoted	Achieved
2.11	Australians are confident about the system of oversight of privacy and security of the COVIDSafe app	(1) Assessment program identifies any privacy risks Assessment program conducted and outcomes published (2) Guidance to government, businesses and the community regarding COVIDSafe app-related privacy law Guidance material prepared and published (3) Effective enquiry, complaint and data breach notification systems Enquiry, complaint and data breach systems utilised	Achieved

\* OAIC Portfolio Budget Statement 2020–21 target.



Table 2.1: Breakdown of indicators by status continued

Indicator	Measure	Target	Status	
3.1	More government-held information is published proactively	(1) The OAIC actively promotes proactive publication through agency engagement  (2) The OAIC actively promotes proactive publication through development of resources and guidance	The OAIC uses the Information Contact Officers Network to promote the benefits of proactive publication of government-held information  The OAIC develops resources to help agencies make more information available to the public	Achieved
3.2	Increase in community awareness and understanding of information access rights	The OAIC will develop resources to help the community understand the right to access government-held information	Publish practice direction to assist members of the public better understand the IC review process	Achieved
4.1	The OAIC takes appropriate regulatory action in relation to strategic privacy and access to information risks	The OAIC utilises the range of regulatory powers and outcomes provided by the Privacy and FOI Acts	Qualitatively and quantitatively demonstrated	Achieved
4.2	The OAIC engages with domestic and international counterparts on regulatory policy and practice	The OAIC collaborates on policy development, shares intelligence and participates in forums	Qualitatively demonstrated	Achieved
4.3	Improved employee engagement	Positive rates against APS Employee Census (Strive, Stay, Say index)	Improvement on previous year (positive variance)	Achieved
4.4	Increased staff retention	Reduced staff turnover and increased internal mobility	Align with APS Employee Census rates for workforce mobility	Achieved
4.5	Attracting high-quality applicants	OAIC recruitment activities result in appointment of a candidate and an order of merit	90% of recruitment activities result in appointment and an order of merit	Achieved
4.6	Staff capability map supports the full range of OAIC functions	The OAIC uses staff capability map to support delivery of full range of functions	Recruitment and training aligned to staff capability map	Not achieved
4.7	Mature the OAIC data management capability to understand and address emerging privacy and enterprise risks	Timely, accurate and reliable data supports core business	Data management complies with OAIC data strategy	Achieved



## Strategic Priority 1

### Advance online privacy protections for Australians

The OAIC works to advance online privacy protections for Australians which support the Australian economy. We do this by influencing the development of legislation, applying a contemporary approach to regulation (including through collaboration) and raising awareness of online privacy protection frameworks.

#### Indicator 1.1: Australians' personal information is protected wherever it flows



##### Measure

(1) The OAIC supports mechanisms that facilitate international data flows while protecting personal information



##### Target: Qualitatively and quantitatively demonstrated

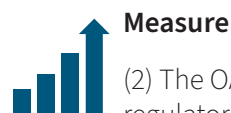
Achieved

In 2020–21, the OAIC has focused on protecting Australians' privacy and building public trust in information handling practices within an environment that enables digital innovation and allows Australia to compete in the global economy. We are committed to taking part in global networks and initiatives to ensure we are well placed to protect the personal information of Australians in a globalised data environment. This includes our active participation in 2 Asia Pacific Privacy Authorities (APPA) forums, and the annual Global Privacy Assembly (GPA) conference, as well as regular meetings of 5 GPA working groups.

Internationally, privacy protection tools are being developed to support cross-border data flows. These tools provide a 'bridge' to connect the different privacy frameworks across the globe.

Globally there is a growing recognition that strong protections for information flows are critical to international trade. The OAIC has provided expert advice to the Australian Government on privacy protection mechanisms that support international data flows. This includes advice provided to the Department of Foreign Affairs and Trade on matters such as free trade agreements.

For more information see Privacy Act review – OAIC submission on page 25.



##### Measure

(2) The OAIC engages in international regulatory compliance and enforcement



##### Target: Qualitatively and quantitatively demonstrated

Achieved

In 2020–21, the OAIC has participated in a range of existing networks and arrangements that promote and support international cooperation in investigation and the enforcement of privacy and data protection laws.

The OAIC is a member of the GPA and Commissioner Angelene Falk is a member of the Executive Committee. We participate in 5 GPA working groups, including the International Enforcement Working Group (IEWG).

GPA committee name	Meetings attended 2020–21
Executive Committee	7
Strategic Direction Sub-Committee	4
Ethics and Data Protection in Artificial Intelligence Working Group	3
COVID-19 related Privacy and Data Protection Issues Working Group	8
International Enforcement Cooperation Working Group	10
Digital Citizens and Consumers Working Group	7
Policy Strategy Working Group Workstream 1: Global Standards and Frameworks	2
<b>TOTAL</b>	<b>41</b>

On 21 July 2020, the OAIC joined with other regulators through the IEWG to sign an open letter to video teleconference providers, setting out clear expectations of these companies given increased privacy risks associated with the sharp uptake of these services during the pandemic. Microsoft, Cisco, Zoom and Google replied to the open letter. The joint signatories undertook further engagement with Microsoft, Cisco, Zoom and Google following their responses to the open letter, and published an update to the joint statement in December 2020.

The OAIC also participates in the Global Cross Border Enforcement Cooperation Arrangement (GCBECA), the APEC Cross-border Privacy Enforcement Arrangement (CPEA) and the Global Privacy Enforcement Network (GPEN).

The OAIC exchanges information related to investigations and provides mutual assistance under memorandums of understanding with the UK Information Commissioner's Office (ICO), the Data Protection Commissioner of Ireland and the Personal Data Protection Commission of the Republic of Singapore.

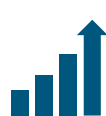


## Case Study: Clearview AI Inc. investigation

### Case Study 1.1.1: Clearview investigation – joint investigation by OAIC and UK ICO

In July 2020, the OAIC and the UK ICO opened a joint investigation into the personal information handling practices of Clearview AI Inc., focusing on the company's use of 'scraped' data and biometrics of individuals. The joint investigation considered Clearview's compliance with the Privacy Act and the UK Data Protection Act 2018. It has been conducted under the GPA's Global Cross Border Enforcement Cooperation Arrangement and the MOU between the OAIC and the ICO. The matter is expected to conclude in 2021–22.

## Indicator 1.2: Australia's privacy frameworks are fit for purpose in the digital age



### Measure

The OAIC provides policy advice to the Australian Government



### Target: Qualitatively and quantitatively demonstrated

Achieved

The OAIC has provided timely and informed policy advice to key Australian Government agencies to promote privacy best practice and address emerging privacy risks arising from advancements in technology.

Specifically, we have engaged closely with the Attorney-General's Department as part of its ongoing review of the Privacy Act, which began in October 2020. On 11 December 2020, we made a substantial submission to the first phase of the review, with 70 recommendations for reform to ensure that the Privacy Act is fit for purpose in the digital age.

We have also made 16 formal submissions on a range of topics related to online privacy, including

the Online Safety Bill 2020 and the Online Safety Bill 2021, the Data Availability and Transparency Bill 2020, the Consumer Data Right, Digital Identity system and the Australian Human Rights Commission (AHRC) discussion paper *Human rights and technology*.

We have also engaged on key digital health reforms such as the Department of Health's Review of the My Health Records legislation. We completed a review of the Data-matching Program (Assistance

and Tax) Guidelines 1994 and have commenced a review of the National Health (Privacy) Rules 2018 to ensure these privacy frameworks remain appropriate in the evolving digital environment.

We are committed to ensuring that Australia's privacy framework reinforces strong cyber security protections and have provided advice to the Department of Home Affairs on its *Strengthening Australia's cyber security regulations and incentives* discussion paper.

## Privacy Act review – OAIC submission

The OAIC's submission in response to the Attorney-General's Department's *Privacy Act review issues paper* focused on the need for a strong, fair and flexible privacy framework that prevents harm, protects fundamental human rights and builds public trust to support a successful economy. We made recommendations that build on the existing, well-established privacy framework to ensure that privacy protections remain consistent with the values of Australians and support organisations and government to use data fairly and responsibly in an increasingly digital economy.

The OAIC's submission recommended:

- greater emphasis on the protection of individuals and the obligations on entities to ensure business models and practices safeguard privacy
- the introduction of fairness and reasonableness standards for the collection, use and disclosure of personal information
- stronger organisational accountabilities for entities, with an onus on organisations to understand the risks that they create for others, and to mitigate those risks up front
- the removal of exemptions for employee records and acts and practices by small business operators and political parties

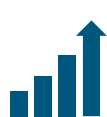
- that individuals should have a direct right to bring actions in the courts against organisations covered by the Privacy Act to seek compensation
- the introduction of a statutory tort that can respond to a wide range of serious invasions of privacy.

The OAIC's submission also recommended reforms to ensure that we can take proportionate regulatory action and meet community expectations through broadening the jurisdiction of the courts to determine privacy matters, strengthening the compulsive powers of the Commissioner and allowing the Commissioner to issue infringement notices.

Additional enforcement powers would enhance the OAIC's ability to focus on issues of greatest risk to privacy, investigate potential breaches of the Privacy Act, deter inappropriate conduct and support privacy best practice.

We have continued to engage with the Attorney-General's Department since making our submission, as well as preparing to provide input to the second phase of the review process, which will seek more specific feedback on the preliminary outcomes of the review.

### Indicator 1.3: The OAIC is a leader in the global privacy community to strengthen protection of Australians' personal information



#### Measure

The OAIC has a leadership role in key international forums



#### Target: Qualitatively demonstrated

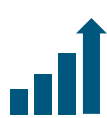
Achieved

The OAIC is a member of the GPA and Commissioner Angelene Falk is a member of the Executive Committee and chair of the Strategic Direction Sub-Committee. The Executive Committee provides strategic direction to the GPA's membership of more than 130 privacy and data protection authorities from across the globe. In October 2020, the OAIC authored 2 key resolutions which were unanimously adopted at the 42nd GPA conference, on facial recognition technology and a joint statements mechanism for emerging global privacy issues.

The OAIC is an active member of 5 GPA working groups, including co-chairing the Digital Citizen and Consumer Working Group. We seek to influence consistency and cooperation in the global regulation of privacy to ensure that Australians' personal information is protected wherever it flows.

We are a founding member and actively participate in APPA, which provides leadership and support for the privacy regulator community across the region. During the reporting period, we attended 2 virtual APPA forums with our counterparts in the Asia Pacific region.

### Indicator 1.4: The OAIC engages with stakeholders in the development of online privacy protections



#### Measure

Views of stakeholders have been sought and considered



#### Target: Qualitatively demonstrated

Achieved

The OAIC has met with stakeholders in preparation for the development of the proposed code of practice for social media and online platforms that trade in personal information (the Online Privacy Code). We have also liaised with the Attorney-General's Department on the development of draft legislation that will amend the Privacy Act to introduce these code-making powers.

The OAIC has worked with stakeholders as part of our engagement with the department on its review of the Privacy Act to discuss our proposals and learn from other privacy experts across business, government and academia. See Privacy Act review – OAIC submission on page 25.

The OAIC also engages with stakeholders across the Australian Government to ensure that new initiatives involving the use of personal information online contain suitable privacy protections. For example, the OAIC has engaged closely with the Digital Transformation Agency to ensure that strong privacy protections are embedded in the legislation that will enable the expansion of the Digital Identity system.

The OAIC has worked closely with stakeholders across the Australian Government and with state and territory privacy authorities, through the National COVID-19 Privacy Team, to respond to COVID-19 proposals and developments with national implications. For example, we have worked collaboratively with the Department of Health on its rollout of the COVID-19 vaccination program.

### Engagement on COVID-19 developments

We have continued to engage with the Australian Government to provide advice and guidance on key COVID-19 developments with personal information handling implications. We provided advice to the Department of Health regarding privacy impact assessments related to the COVID-19 vaccination program and published guidance for state and territory health authorities regarding COVID app data. We also meet regularly with the National COVID-19 Privacy Team to consider privacy risks associated with the pandemic, such as the collection of personal information for contact tracing purposes.

## International privacy forums

The OAIC recognises that global and regional forums present a unique opportunity for Australia to be a leader in the privacy community and influence the global debate on privacy issues.

These forums allow us to collaborate and draw on best practice in:

- cooperating on investigations and enforcement
- developing policy, guidance and education campaigns
- influencing the development of global policy and standards.

Through these forums we work towards the interoperability of Australia's privacy framework with other data protection frameworks around the world, and exchange information to make the best use of our resources and help ensure consistency in the system of regulatory oversight.

## Global Privacy Assembly

The OAIC is a member of the Global Privacy Assembly (GPA), which provides international leadership by coordinating the efforts of over 130 privacy and data protection authorities from across the globe. As well as co-chairing the Digital Citizens and Consumers Working Group, the OAIC is a member of working groups on International Enforcement Cooperation, COVID-19 related privacy and data protection issues, Artificial Intelligence, and global standards and frameworks.

The OAIC has had ongoing engagement with the GPA AI Facial Recognition Technology subgroup, which is focusing on developing a set of agreed privacy principles and expectations for the appropriate use of personal information in facial recognition technology.

## Asia Pacific Privacy Authorities

We are a founding member of Asia Pacific Privacy Authorities (APPA), the principal forum for privacy authorities in the Asia Pacific region to form partnerships and exchange ideas about privacy regulation, new technologies and the management of privacy enquiries and complaints.

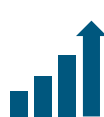
In December 2020, the OAIC attended the 54th APPA forum hosted by the Office of the Victorian Information Commissioner, where we presented on Australia's current privacy law reform, Consumer Data Right regime and findings from the Australian Community Attitudes to Privacy Survey (see page 48). In June 2021, we attended the 55th APPA forum hosted by the Personal Information Protection Commission (PIPC) of the Republic of Korea and engaged in discussions on the new normal in a post-COVID-19 world, artificial intelligence and formulating global standards in privacy.

## Global Privacy Enforcement Network

The OAIC is part of the Global Privacy Enforcement Network (GPEN) designed to facilitate cross-border cooperation in the enforcement of privacy laws. GPEN builds on the Organisation for Economic Co-operation and Development's Recommendation on Cross-border Cooperation in the Enforcement of Laws Protecting Privacy which recognises the need for greater cooperation between privacy enforcement authorities on cross-border privacy matters.

The OAIC attends regular teleconferences to discuss topical issues, engages in the GPEN Alert system and participated in the annual GPEN Sweep survey in 2020–21.

### Indicator 1.5: A code of practice for digital platforms increases the privacy protection of Australians in the online environment



#### Measure

Code of practice for digital platforms is developed



#### Target: Code is registered

Not applicable<sup>1</sup>

The Attorney-General's Department is developing legislation to amend the Privacy Act to introduce new powers for the development of an Online Privacy Code for social media and online platforms that trade in personal information. The Online Privacy Code will require these entities to be more transparent about data sharing and obtain more specific consent from users when they collect, use and disclose personal information.

This legislation has been delayed as a result of the department's work in relation to the COVID-19 pandemic.

The OAIC has undertaken preparatory work to assist in collaborating with stakeholders to develop the Online Privacy Code once the Privacy Act has been amended. We have established a dedicated project team to manage this work. We have also liaised with the department to assist in the development of the draft legislation.

### Cyber security

Through our role as the national privacy regulator, the OAIC has a key part to play in raising the cyber security posture of Australian business and promoting awareness for individuals. This work supports the Australian Government's objective to uplift the nation's cyber security posture through the Cyber Security Strategy 2020.

The OAIC is committed to ensuring that Australia's privacy frameworks support cyber security protections that are fit for purpose in the digital age. Frameworks which require the strong protection of personal information will have flow on effects to strengthen Australia's cyber security ecosystem.

We have liaised with government on a number of proposals, including the *Strengthening Australia's cyber security regulations and incentives* discussion paper.

We have also identified security of personal information as a key regulatory focus that will support the government's efforts to protect Australians from cyber security incidents. In 2020–21, we began a review of our *Guide to securing personal information* including early public and targeted consultation to inform the development of an updated guide.

<sup>1</sup> Indicator 1.5 was 'Not applicable' because the legislation to support the Online Privacy Code was delayed.



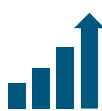
## Strategic Priority 2

### Influence and uphold privacy and information access rights frameworks

The OAIC regulates the collection and management of personal information by organisations and agencies to ensure it is handled responsibly. We promote access to government-held information through the regulation of the *Freedom of Information Act 1982* (FOI Act) and our role in information policy. The OAIC promotes and upholds these rights and regulatory frameworks through the delivery of our core functions. This includes influencing domestic legislative and regulatory developments to protect and advance privacy and access to information for the community.


#### Indicator 2.1: The OAIC identifies, scrutinises and advances policy and legislative reform proposals

**Measure**



The OAIC influences policy and law makers to support privacy and information rights

**Target: Number of submissions published and number of times bill scrutiny tasks completed**



Achieved

The OAIC has provided timely and informed advice to government regarding the privacy and access to information impacts of proposals for legislative reform.

#### Privacy submissions and bill scrutiny

In 2020–21, the OAIC made 21 submissions and provided bill scrutiny comments and advice to a range of Australian Government stakeholders on 38 draft bills in relation to privacy law. Topics included the COVID-19 pandemic; developments in education, credit, health, aged care, financial sector reform, national security, law enforcement, telecommunications, data matching; and the development and deployment of new technologies across various industry sectors.

We have provided detailed advice to government in relation to privacy law reform. This includes engaging with the Attorney-General's Department's review of the Privacy Act and liaising with the department on the development of draft legislation to introduce an Online Privacy Code.

Following the launch of the Consumer Data Right in the banking sector on 1 July 2020, the OAIC has continued to provide privacy advice to government on reforms to the *Competition and Consumer Act 2010* and the Competition and Consumer (Consumer Data Right) Rules 2020 relating to the expansion of the Consumer Data Right system.

#### FOI submissions and bill scrutiny

The OAIC has given timely and expert advice to government regarding the access to information impacts of legislative reform proposals. We have provided bill scrutiny comments across a broad range of subject areas including financial sector reform, investment funds, online safety, access to digital records, and migration and citizenship.

During 2020–21, the OAIC provided 12 bill scrutiny comments relating to freedom of information (FOI), including comments on draft legislation for the Commonwealth Integrity Commission.

We provided submissions to the Senate Finance and Public Administration Legislation Committee's inquiry into the Data Availability and Transparency Bill 2020 in November 2020

and March 2021. We were also consulted on report recommendations for the Parliamentary Joint Committee on Intelligence and Security

(PJCIS) inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press.

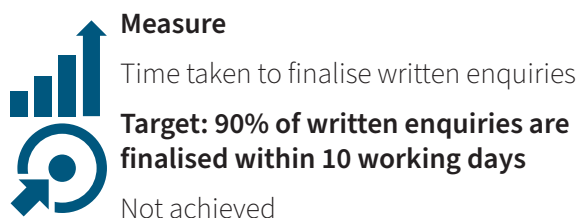
## Privacy law submissions

The OAIC made 21 submissions in 2020–21 covering a wide range of topics including submissions to:

- the National Transport Commission regarding a national in-service safety law for automated vehicles
- the Attorney-General's Department on draft legislation on the Commonwealth Integrity Commission
- the Department of Health regarding the legislation review of the *My Health Records Act 2012*
- the Australian Competition and Consumer Commission consultation on version 2 of the Competition and Consumer (Consumer Data Right) Rules 2020
- the NSW Inquiry into cyber security
- Australian Competition and Consumer Commission consultation on the *Digital advertising services inquiry interim report*
- the Australian Competition and Consumer Commission consultation on the energy rules framework for the application of the CDR to the energy sector
- the Select Committee on Financial and Regulatory Technology issues paper
- the PJCIS in relation to the Telecommunications Legislation Amendment (International Production Orders) Bill 2020
- the PJCIS in relation to the Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020
- the Attorney-General's Department's Privacy Act review issues paper
- 2 consultations on the Online Safety Bill
- 2 consultations on the News Media and Digital Platforms Mandatory Bargaining Code
- 2 consultations on the Data Availability and Transparency Bill 2020
- 2 consultations on the Security Legislation Amendment (Critical Infrastructure) Bill 2020
- the Digital Transformation Agency in relation to the development of legislation on the Digital Identity system
- the AHRC discussion paper *Human rights and technology*.



## Indicator 2.2: Respond to privacy and information access enquiries from the public



The OAIC provides a free public information service on privacy and FOI issues.

In 2020–21, we finalised 65% of written enquiries within 10 working days.

This result reflects the impact of the increased number of written enquiries received during the year, and changes to OAIC procedures as a result of the COVID-19 pandemic.

In March 2020, the OAIC's enquiries line changed from a call-in to a call-back service in response to the pandemic. While the number of phone enquiries fell by 35% in 2020–21, the number of written enquiries increased by 14%. The call-in service was reinstated in late 2020. Between 1 December 2020 and 30 June 2021, we finalised 91% of written enquiries within 10 days.

### Privacy enquiries

During this reporting period, we experienced a 22% decrease in privacy enquiries from 2019–20. The OAIC answered 7,020 telephone calls and responded to 4,625 written enquiries. More than 62% of privacy-related phone enquiries were about the Australian Privacy Principles (APPs). The most frequently discussed issue was APP 6, followed by APP 12. We also continued to receive calls about credit reporting and the Notifiable Data Breaches scheme.

As a part of our MOU with the Australian Capital Territory (ACT) Government we continued to provide privacy services to ACT public sector agencies, including responding to enquiries from the public about the *Information Privacy Act 2014* (ACT) and its Territory Privacy Principles (TPPs). For more information see Appendix C.

### Privacy enquiries by issue

During this reporting period the most common privacy enquiries we received were about privacy generally, followed by access to personal information (APP 12), collection of personal information (APP 3), and the use or disclosure of personal information (APP 6).

**Table 2.2.1: Phone enquiries related to APPs**

Issue raised in phone enquiry	Number
General enquiries	959
APP 12 – Access to personal information	735
APP 3 – Collection of solicited personal information	510
APP 6 – Use or disclosure of personal information	500
Exemptions	450
APP 11 – Security of personal information	373
APP 5 – Notification of the collection of personal information	180
APP 13 – Correction of personal information	66
APP 7 – Direct marketing	56
APP 1 – Open and transparent management of personal information	31
APP 10 – Quality of personal information	27
APP 8 – Cross-border disclosure of personal information	24
APP 2 – Anonymity and pseudonymity	7
APP 4 – Dealing with unsolicited personal information	4
APP 9 – Adoption, use or disclosure of government related identifiers	1

#### Note

There may be more than one issue handled in an enquiry.

We also handled questions about other privacy issues, reflecting the broad range of matters the OAIC regulates. Table 2.2.2 categorises these enquiries.

**Table 2.2.2: Phone enquiries on other privacy matters**

Issue raised in phone enquiry	Number
Credit reporting	221
Notifiable Data Breaches scheme	171
Data breach notification (voluntary)	78
Spent convictions	19
Tax file numbers	17
My Health Record	3
Consumer Data Right	4
Privacy codes	1
Healthcare Identifier	1

**Note**

There may be more than one issue handled in an enquiry.



## Case Studies: Privacy enquiries

### Case Study 2.2.1: Enquiry about the Notifiable Data Breaches scheme

The director of a childcare centre enquired about dealing with a data breach involving an email sent to families using the 'cc' rather than the 'bcc' address field. We referred the enquirer to guidance on the OAIC website about the Notifiable Data Breaches scheme and provided information on assessing whether the incident was an eligible data breach that required notification. We also provided the enquirer with the OAIC's *Guide to securing personal information* and *Guide to managing data breaches*.

### Case Study 2.2.2: Enquiry about the APPs

We received an enquiry from an individual seeking to obtain photos from a private school where they had been a student several decades ago. We advised the individual that they were able to request access to any information the school held about them under APP 12. This would include the photos they sought, if the school still held them and the individual was identifiable from the photos. We also advised that the individual could make a privacy complaint to the OAIC if the school refused to provide access to any of their personal information that it still held.

### Case Study 2.2.3: Enquiry about credit reporting

An enquirer had obtained a copy of a credit report that included inaccurate information and asked how to have the information corrected. We advised them to contact the credit reporting body that had provided the credit report to request correction of the information. We also advised that if the credit reporting body disagreed or refused to correct the information they could make a complaint to a recognised External Dispute Resolution scheme, and then to the OAIC.

## FOI enquiries

During this reporting period, we experienced a 21% decrease in FOI enquiries from 2019–20. The OAIC answered 1,106 telephone calls and responded to 718 written enquiries about FOI. Most enquiries were about general processes for FOI applicants (37%), including how to make an FOI request or complaint, or seek review of an FOI decision. We also published guidance for the public on how to access Australian Government information, including on how to request official documents of a minister.

**Table 2.2.3: FOI enquiries by issue**

Issue	Number
OAIC's jurisdiction	761
General processes	666
Agency statistics	238
Processing by agency	135
Access to personal information	37
Access to general information	26
No other legislation (FOI)	16
Vexatious application	5
Information Publications Scheme	4
Amendment and annotation	3

### Note

There may be more than one issue handled in an enquiry.

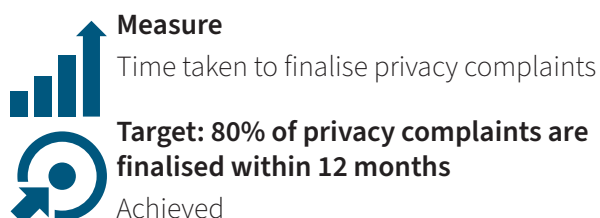


## Case Study: FOI enquiry

### Case Study 2.2.4: Enquiry about how to make an FOI request

An enquirer asked how to make an FOI request to a member of parliament (MP) who is a minister. They had been in contact with the MP's office and were told that it was not the correct avenue. We advised the individual that MPs are only subject to the FOI Act in their ministerial capacity, and to direct an FOI request for an 'official document of a minister' to the minister's department or agency. We also noted that documents relating to a minister's personal or electorate affairs, or party-political documents, would not be subject to FOI.

### Indicator 2.3: Resolve privacy complaints



Under s 36 of the Privacy Act, complaints may be made to the Commissioner by individuals about an act or practice that may be an interference with their privacy. An interference with privacy may relate to the APPs or to the credit reporting provisions of the Privacy Act.

The APPs deal with the management, collection, use or disclosure, quality, security, access and correction of personal information held by an agency or organisation covered by the Privacy Act.

In 2020–21 the OAIC:

- received 2,474 privacy complaints, which is a 7% decrease compared to 2019–20. The decrease in privacy complaints over the 2019–20 and 2020–21 financial years is a reversal of the trend over the preceding 3 years, and is likely to reflect the impact of the COVID-19 pandemic
- closed 2,151 privacy complaints, which is a 36% decrease on the previous year – noting that in 2019–20 the OAIC conducted a project to address a backlog in privacy complaints, with additional funding and staff<sup>2</sup>
- finalised 94% of all privacy complaints within 12 months of receipt, with the average time taken to close a privacy complaint being 4.3 months
- closed 93% of complaints through early resolution and conciliation.

During the reporting period we introduced process improvements which resulted in reduced handling times for complaints referred for further investigation, including faster up-front assessments, streamlined investigation processes, and an increased focus on early resolution and conciliation.

### Privacy complaints by issue

The majority of privacy complaints we received were about the handling of personal information under the APPs. The most common issues raised in these complaints were:

- use or disclosure of personal information (29%)
- security of personal information (28%)
- access to personal information (18%).

### Privacy complaints by sector

During this reporting period, the largest number of privacy complaints were received against entities within the following 3 sectors: finance (including superannuation), Australian Government and health service providers. Finance has overtaken the Australian Government as the most complained about sector.

**Table 2.3.1: Top 10 sectors by privacy complaints received**

Sector	2020–21
Finance (including superannuation)	327
Australian Government	310
Health service providers	301
Retail	177
Online services	152
Credit reporting bodies	109
Real estate agents	102
Personal services (includes employment, childcare and vets)	97
Telecommunications	93
Property/construction/architects/surveyors	73

<sup>2</sup> In addition to the 2,151 privacy complaints closed in 2020–21, we resolved 1,746 matters through a representative complaint that was finalised in January 2021. As these complaints were resolved through an alternative process, they have not been included in the calculations against this performance measure.

## External dispute resolution schemes

The Information Commissioner can recognise an external dispute resolution (EDR) scheme to handle particular privacy-related complaints (s 35A of the Privacy Act). The EDR schemes we recognise are:

- Australian Financial Complaints Authority
- Energy & Water Ombudsman NSW
- Energy & Water Ombudsman SA
- Energy and Water Ombudsman (Victoria)
- Energy & Water Ombudsman Queensland
- Energy and Water Ombudsman Western Australia
- Public Transport Ombudsman (Victoria)
- Telecommunications Industry Ombudsman
- Tolling Customer Ombudsman.

During the year, the OAIC worked towards an agreement with EDR schemes concerning the transfer of privacy complaints under s 50 of the Privacy Act, where EDR schemes could more appropriately deal with these complaints.

## Resolving privacy complaints

The OAIC's complaint handling team (comprising the early resolution, conciliations, investigations and determinations areas) deal mostly with APP and credit reporting complaints. They also handle complaints about spent convictions, My Health Records, tax file numbers, the Territory Privacy Principles, data matching, Healthcare Identifiers and student identifiers.

They initially assess all complaints against the OAIC's jurisdiction and attempt resolution. Under s 40A of the Privacy Act, the Commissioner must attempt conciliation where it is reasonably possible that the complaint may be conciliated successfully. The OAIC publishes a selection of de-identified complaints to demonstrate the outcomes achieved with the assistance of the OAIC and to provide guidance to parties regarding potential outcomes.

In 2020–21, 93% of all complaints closed during the year were finalised through our early resolution and conciliation processes.<sup>3</sup>

Matters not resolved in conciliation or which are considered not able to be conciliated are referred for investigation under s 40 of the Privacy Act.

Under s 41 of the Privacy Act, the Commissioner may decline to investigate matters where, for example, no interference with privacy is detected, investigation is not warranted in the circumstances, or where the respondent is adequately dealing with the complaint.

Under s 52 of the Privacy Act, after investigating a complaint, the Commissioner may make a determination dismissing the complaint or finding the complaint is substantiated and making declaration concerning remedial actions, such as compensation.

## Determinations

The Commissioner made 17 determinations in relation to privacy complaints during 2020–21 compared to 4 in the previous reporting period.

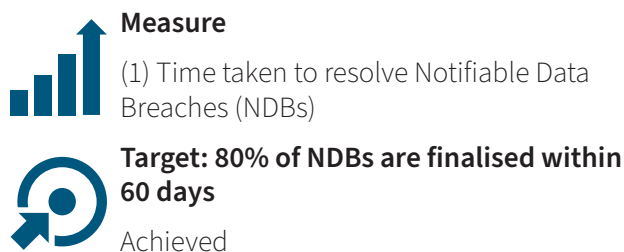
One of these was a representative complaint of 9,258 individuals who were affected by a data breach at Home Affairs. The determination required the respondent to assign a quantum of damages for class members consistent with categories set out in the determination.

Another 14 determinations addressed privacy breaches under the Privacy Act, while 2 dealt with spent and quashed conviction schemes under the *Crimes Act 1914*. The Commissioner found interferences with privacy in 10 determinations in relation to APPs 6, 10, 11, 12 and 13, and in relation to the 2 Crimes Act matters.

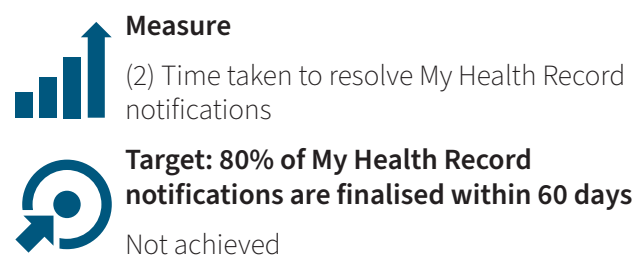
The Commissioner awarded compensation in 8 determinations ranging from \$1,000 to \$19,980. The Commissioner also made other types of declarations. In 5 determinations the respondents were required to conduct reviews or audits. Summary details of privacy determinations made in 2020–21 are available on the OAIC website.

<sup>3</sup> In addition to the 2,151 privacy complaints closed in 2020–21, we resolved 1,746 matters through a representative complaint finalised in January 2021 which have not been included in this calculation.

## Indicator 2.4: Ensure timely handling of data breach notifications



In 2020–21, the OAIC received 975 notifications under the NDB scheme and resolved 987. We finalised 80% of notification within 60 days.



We finalised 50% of My Health Record data breach notifications within 60 days. There were 2 notifications received during the reporting period and one was finalised within 60 days.

### Notifiable Data Breaches scheme

Under the Notifiable Data Breaches (NDB) scheme, Australian Government agencies and private sector organisations with obligations under the Privacy Act must notify individuals who are likely to be at risk of serious harm as a result of a data breach. They must also notify the OAIC.

Our responsibilities under the NDB scheme include:

- receiving notifications of eligible data breaches
- encouraging compliance with the NDB scheme, including handling complaints and taking regulatory action in response to instances of non-compliance
- offering advice and guidance to regulated entities and informing the community about how the scheme operates
- responding to non-compliance.

The OAIC reviews every notice received under the NDB scheme to ensure the notifying entity has met its obligations. This includes considering whether the notifying entity has:

- taken steps to contain the breach
- assessed whether the breach is likely to result in serious harm to individuals whose personal information was exposed
- taken steps to mitigate the risk of serious harm resulting from the breach
- provided appropriate notification to the OAIC and to affected individuals on the details of the breach

and the steps that individuals can take to mitigate the risk of serious harm arising from the breach.

The Commissioner's powers under the NDB scheme include the discretion to direct an entity to notify individuals of eligible data breaches or declare that notification does not need to occur or can be delayed.

In 2020–21, the NDB scheme saw a 7% decrease in the number of data breach notifications compared to 2019–20. The average time taken to close NDBs was 62 days, down from 76 days in 2019–20.

### Mandatory digital health data breach notifications

The OAIC administers a mandatory notification scheme for digital health data breaches. For more information see the *Annual report of the Australian Information Commissioner's activities in relation to digital health 2020–21* on the OAIC website.

**Table 2.4.1: NDB scheme, mandatory My Health Record and voluntary data breach notifications received**

	2018–19	2019–20	2020–21
Notifiable data breaches	950	1,050	975
Mandatory notifications (My Health Records Act)	35	1	3
Voluntary notifications	175	125	178
<b>Total</b>	<b>1,160</b>	<b>1,176</b>	<b>1,156</b>



## Case Studies: Notifiable Data Breaches

### Case Study 2.4.1: Ransomware attack

An organisation was subject to a ransomware attack which resulted in the encryption of its files. The organisation engaged a cybersecurity forensic firm to assist it with the data recovery process, however the firm could only recover a limited amount of the encrypted data. As the contact details of the clients were still encrypted, the organisation could not notify the affected individuals directly.

The organisation published a notification on the front page of its website where it could be easily located. The notification was made available in 4 different languages to reflect the needs of its clients. The notice provided a telephone hotline number that individuals could call to make direct inquiries about the data breach and have the opportunity to speak to a crisis counsellor. This was supplemented by a script read to clients about the data breach when clients made contact in person or by telephone. The organisation also drafted a written notification ready to be sent out in the event that their clients' contact details were able to be recovered.

### Case Study 2.4.2: Social engineering

An impersonator obtained some personal information about an entity's customer through a phishing scam. The impersonator made contact with the entity over the telephone on several occasions, pretending to be the customer.

The impersonator was able to provide some personal information to the phone operator but did not pass the verification questions, however the phone operator allowed the interaction to proceed.

During the course of the telephone conversation, further personal information such as credit card numbers, account numbers and customer numbers were disclosed. Internet banking access was also changed, allowing the impersonator to transfer funds out of the customer's account.

On discovering the incident, the entity immediately stopped the customer's access cards, blocked internet banking access and changed the customer's verbal passwords. The entity notified and reimbursed the affected customer.

The entity took a range of steps to prevent a similar breach occurring in the future, including additional training for staff on authentication processes, implementation of regular staff discussions on this issue, strengthened quality assurances including call monitoring, and technical solutions such as SMS verification for telephone interactions.

## Notifiable Data Breaches scheme reports

The OAIC published the Notifiable Data Breaches report January–June 2020 on 30 July 2020 and the Notifiable Data Breaches report July–December 2020 on 28 January 2021.

These reports provide government and industry with insights into trends in data breaches and assist in improving awareness and understanding of data breach risks and steps that entities can take to prevent them occurring.

The OAIC's data breach reports also highlight emerging issues and areas for ongoing attention by entities entrusted with protecting personal information.



## Indicator 2.5: Strategic assessment and advice provided to the Commissioner in relation to all significant privacy risks



In October 2020, the OAIC established the Regulatory Action Committee (RAC). The RAC is a committee comprising OAIC Executive and senior staff who advise the Commissioner in relation to significant regulatory action. The RAC ensures that the OAIC responds appropriately to emerging and significant, or potentially significant, privacy risks.

The OAIC identifies matters to be submitted to the RAC through a range of sources, including domestic and international environmental scanning, information provided to the OAIC by a member of the public, complaints or enquiries, preliminary inquiries, assessments and data breach notifications.

The range of regulatory responses that the RAC may consider include:

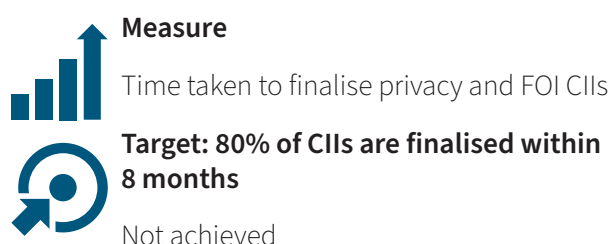
- undertaking an assessment or audit in relation to a particular entity or sector
- commencing a Commissioner-initiated investigation (CII) previously defined
- pursuing a particular regulatory action following a CII, such as a determination or civil penalty proceedings
- publishing guidance material.

When matters are submitted for consideration, the RAC:

- assesses the privacy risks against the OAIC's strategic objectives and regulatory priorities

- makes recommendations to the Commissioner on the appropriate regulatory response, in accordance with the OAIC's Privacy Regulatory Priorities and Privacy Regulatory Action Policy.

## Indicator 2.6: Conduct Commissioner-initiated investigations



A CII is conducted in response to the identification of a significant risk. In this reporting period, the OAIC finalised 11 CIIs, with 2 of these finalised within the 8-month target (or 18%).

Ten of the CIIs related to privacy law, including the 2 CIIs finalised within 8 months. We also finalised one CII into FOI processes at Home Affairs.

### Commissioner-initiated investigations (Privacy)

The Commissioner may investigate acts or practices that may be an interference with privacy on her own initiative, with a primary objective of improving the privacy practices of investigated entities and the regulated community generally and instilling public confidence in the protection of personal information. Subsection 40(2) of the Privacy Act allows the Commissioner to investigate, on the Commissioner's own initiative, an act or practice that may be an interference with privacy. Where an individual has suffered compensable loss or damage, they may make a complaint under s 36 of the Privacy Act.

During this reporting period, we opened 4 privacy CIIs. As at 30 June 2021, there were 8 ongoing privacy CIIs, including 2 from 2020–21.

The lower number of CIIs opened and closed this reporting period is reflective of our new practices in defining a CII. Previous reporting captured preliminary inquiries, which are inquiries that may lead up to, but do not include a CII. In this reporting period, we opened 49 preliminary



inquiries in relation to the APPs, which are no longer included in our CII reporting statistics.

In 2020–21 we closed 10 CIIs including one into the acts and practices of Uber Technologies Inc. and Uber B.V., with the Commissioner determining that they failed to appropriately protect the personal information of Australian customers and drivers accessed in a cyber attack in late 2016.

Following an earlier CII, the OAIC continued to pursue civil penalty proceedings in the Federal Court against Facebook Inc. and Facebook Ireland Limited in relation to allegations that the personal information of Australian Facebook users had been improperly collected by third-party applications.

**Table 2.6.1: Commissioner-initiated investigations opened and closed (Privacy)**

	2018–19	2019–20	2020–21
Number of CIIs opened	15	19	4
Number of CIIs closed	7	21	10



### Case Study: CII – Flight Centre Travel Group Ltd

#### Case Study 2.6.1: Flight Centre – Failure to take reasonable steps to prevent accidental disclosure of Australians' personal information

On 25 November 2020, the Commissioner determined that Flight Centre Travel Group Ltd had interfered with the privacy of almost 7,000 customers by disclosing their personal information to third parties without consent. The information, including individuals' credit card and passport details, was released by Flight Centre during a

'design jam' in 2017. Participants in the product development event were given access to a dataset that included customers' personal information, despite preliminary checks to de-identify or remove personal information. The error was only found after the information had been available for 36 hours.

The Commissioner found the company breached 3 APPs by:

- not taking reasonable steps to implement practices to ensure compliance with the APPs
- disclosing individuals' personal information without consent
- failing to take reasonable steps to appropriately secure the personal information.

The Commissioner also found that general statements in Flight Centre's privacy policy about disclosing personal information to improve and develop their product did not amount to valid consent to disclosing its customers' information in the design jam. This is because the information provided was not sufficiently specific and bundled together different uses and disclosures of personal information. The Commissioner made clear that organisations should not rely on privacy policies to provide notice and obtain consent in relation to personal information handling.

The determination identified additional steps Flight Centre should have taken to build privacy by design into a new project involving personal information handling, particularly as it involved sharing a large dataset with third party suppliers for analysis. These included taking additional steps to identify and manage privacy risks, like undertaking a privacy impact assessment.

The determination noted that Flight Centre acted promptly when it became aware of the breach, by restricting access to the personal information, investigating the incident, and reviewing and implementing changes to relevant practices, procedures and systems. The Commissioner ordered Flight Centre not to repeat the activities. No further action was taken in the matter.



### Case Study: CII – Facebook Inc. and Facebook Ireland

#### Case Study 2.6.2: Facebook – Disclosure of personal information to the ‘This Is Your Digital Life’ app

In March 2020, the Commissioner lodged proceedings against US-based Facebook Inc. and Facebook Ireland in the Federal Court of Australia, alleging the social media platform had committed serious and/or repeated interferences with privacy under s 13G of the Privacy Act, and applying for a civil penalty. The proceedings followed media reports that the developer of a third-party app, the ‘This Is Your Digital Life’ (TIYDL) app, had sold Facebook user data to Cambridge Analytica, a data analytics firm, for political campaigning purposes.

The Commissioner alleges in the proceedings that in the period 12 March 2014 to 1 May 2015, Facebook Inc. and Facebook Ireland disclosed the personal information of up to 311,127 Australian Facebook users to the TIYDL app, in breach of APP 6. This figure included individuals who had directly installed the TIYDL app and individuals whose data may have been shared by their Facebook friends. The Commissioner also alleges that both Facebook entities did not take reasonable steps during this period to protect their users’ personal information from unauthorised disclosure, in breach of APP 11.

On 22 April 2020, the Federal Court decided that the Commissioner could serve legal documents on US-based Facebook Inc. and Facebook Ireland outside Australia. Facebook Inc. applied to the Court to set this decision aside on the basis that the Commissioner did not have jurisdiction to serve the legal documents. On 14 September 2020, the Court dismissed Facebook Inc.’s application. Facebook Inc. appealed. On 7 May 2021, the full Federal Court heard Facebook Inc.’s appeal regarding jurisdiction to serve court documents and reserved its decision.

The proceedings are ongoing in 2021–22. The Federal Court can impose a civil penalty of up to \$1.7M for each serious and/or repeated interference with privacy (as per the penalty rate applicable in 2014–15).



### Case Study: CII – Uber Technologies, Inc. and Uber B.V.

#### Case Study 2.6.3: Uber – Failure to take reasonable steps to secure Australians’ personal information

On 30 June 2021, the Commissioner determined that Uber Technologies, Inc. and Uber B.V. (Uber) interfered with the privacy of an estimated 1.2 million Australians.

In October and November 2016 Uber was subject to a cyber attack. The attackers accessed the personal information of Australian customers and drivers. Rather than disclosing the breach responsibly, Uber paid the attackers a reward through a bug bounty program for identifying security vulnerabilities. Uber did not conduct a full assessment of the personal information that may have been accessed until almost a year after the data breach, and did not publicly disclose the data breach until November 2017.

While Uber required the attackers to destroy the data and there was no evidence of further misuse, the OAIC investigation focused on whether Uber had preventative measures in place to protect Australians’ data. The Commissioner found that Uber breached the Privacy Act by not taking reasonable steps to protect Australians’ personal information from unauthorised access or to destroy or de-identify the data as required. Uber also failed to take reasonable steps to implement practices, procedures and systems to ensure compliance with the APPs.

The Commissioner’s determination followed detailed investigations into US-based Uber Technologies, Inc. and Uber B.V. based in the Netherlands, which involved significant jurisdictional matters and complex corporate arrangements and information flows. The matter raised issues around the application of the Privacy Act to overseas companies that outsource the handling of Australians’ personal information to other companies within their corporate group.

In this case, Australians' personal information had been directly transferred to servers in the United States under an outsourcing arrangement, and the US-based company argued it was not subject to the Privacy Act. The Commissioner held that both Uber companies were required to comply with the Privacy Act.

The Commissioner ordered Uber to:

- prepare, implement and maintain a data retention and destruction policy, information security program, and incident response plan that will ensure Uber complies with the APPs
- appoint an independent expert to review and report on these policies and programs and their implementation, submit the reports to the OAIC, and make any necessary changes recommended in the reports.

### Commissioner-initiated investigations (FOI)

Under s 69(2) of the FOI Act, the Information Commissioner may, on their own initiative, commence an investigation into an action taken by an agency in performing functions or exercising powers under the FOI Act.

The investigation may look at a single agency decision or action, at a systemic problem or recurring pattern in an agency's practices and processes in handling FOI matters, or the Information Commissioner may conduct an investigation into a practice or problem occurring in more than one agency. The issue to be investigated may come to the attention of the Information Commissioner as a result of an IC review or a series of applications for IC review, or in some other way.

During 2020–21, the Information Commissioner finalised one investigation into Home Affairs' compliance with the statutory processing period in the FOI Act when processing FOI requests for non-personal information.



### Case Study: CII – Department of Home Affairs

#### Case Study 2.6.4: Department of Home Affairs – Processing of FOI requests for non-personal information

The decision to commence a CII was the result of several factors, including the OAIC receiving a number of FOI complaints and IC review applications related to Home Affairs' compliance with statutory timeframes for processing requests for non-personal information.

The Information Commissioner also considered the statistics reported by Home Affairs for the financial years 2016–17, 2017–18 and 2018–19 and the period 1 July 2019 to 30 September 2019. In each of the financial years, over 50% of the FOI requests for non-personal information were processed outside of the statutory processing period.

The investigation found that the department did not have appropriate measures in place to ensure compliance with statutory timeframes for processing FOI requests for non-personal information, including the absence of adequate governance and systems of accountability. The investigation also noted that the issues identified had been the subject of previous reports, indicating the need for sustained rectification of issues of delay.

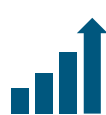
The Information Commissioner made a number of recommendations aimed at improving the policies, systems of governance and accountability, procedures and training of the department to ensure that it is able to meet the statutory processing periods specified under the FOI Act. These recommendations included:

1. The appointment of an Information Champion which may be supported by an information access governance board

2. The preparation and implementation of an operational manual for processing FOI requests for non-personal information
3. Providing both FOI section staff and other staff who process FOI requests with relevant training
4. Undertaking an audit of the processing of FOI requests for non-personal information to assess whether recommendations 2 and 3 had been implemented and operationalised and sufficiently addressed the issues identified in the investigation.

In response to these recommendations, Home Affairs accepted all recommendations and undertook to implement them in full. It will advise on the implementation of the recommendations which are due to be finalised in 2021–22.

## Indicator 2.7: Provide merits review of FOI decisions made by agencies



### Measure

Time taken to finalise Information Commissioner (IC) reviews



**Target: 80% of IC reviews are completed within 12 months**

Not achieved

We finalised 73% of IC reviews within 12 months. A significant increase in the number of IC review applications and our focus on reducing the number of cases over 12 months old prevented us from reaching our 80% target.

During this reporting period we recorded another significant increase in IC review applications, receiving 1,224 – a 15% increase compared to 2019–20 (when we received 1,066).

We finalised 1,018 IC reviews in 2020–21 – a 23% increase compared to 2019–20 (when we finalised 829).

We finalised 580 IC reviews (57%) within 120 days. The average time taken to finalise IC reviews was 251 days.

## Information Commissioner reviews

An Information Commissioner (IC) review is a review of a decision made by an Australian Government agency or minister subject to the FOI Act, including a decision:

- refusing to grant access to a document wholly or in part, including when an agency has been taken to refuse access because it has not made a decision within the statutory timeframe
- that a requested a document does not exist or cannot be found
- granting access to a document where a third party has a right to object (for example, if a document contains their personal information)
- to impose a charge for access to a document, including a decision to refuse to waive or reduce a charge
- refusing to amend or annotate a record of personal information.

We achieved an increase in the number of finalised IC reviews in this reporting period through a consistent focus on early intervention or informal resolution where possible. We used our regulatory powers under the FOI Act to issue notices to agencies to provide an adequate statement of reasons (under s 55E), to produce information or documents (s 55R), to produce exempt documents (s 55T), and to produce national security, Cabinet or Parliamentary Budget Office documents (s 55U). We used various approaches to help resolve IC reviews, such as narrowing the scope of a review, providing an appraisal or preliminary view, and assisting parties to reach agreement. In 2020–21, we finalised 964 IC reviews without a formal decision being made under s 55K (95%).

We finalised 143 IC reviews (14%) after the applicant withdrew their application following action taken by the agency to resolve the issues in the IC review (such as issuing a decision and statement of reasons in a deemed access refusal case, or by making a revised decision under s 55G of the FOI Act to give the applicant access to further documents or material), or after receiving our appraisal of their application's merits.

We also finalised 14 IC reviews by written agreement between the parties under s 55F of the FOI Act.

The Information Commissioner made 54 IC review decisions under s 55K of the FOI Act (which are published on AustLII).

Of these:

- 22 decisions (41%) set aside and substituted the decision under review
- 7 decisions (13%) varied the decision under review
- 25 decisions (46%) affirmed the decision under review.<sup>4</sup>

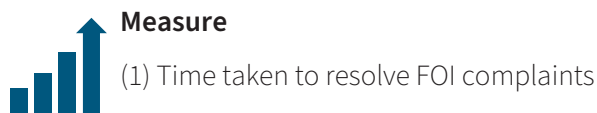
These decisions help agencies interpret the FOI Act and provide guidance on the exercise of their powers and functions by addressing novel issues and building on existing IC review decisions.

For more information about IC reviews see Appendix E.

Summary details of IC review decisions made in 2020–21 are available on the OAIC website.

<sup>4</sup> A number of decisions subject to IC review were finalised within 120 days. The average time taken to finalise IC reviews was 251 days.

## Indicator 2.8: Improve agencies' processes for managing FOI requests



Achieved

During the reporting period, we finalised 174 FOI complaints, compared to 71 in 2019–20, an increase of 145%.

We finalised 82% of FOI complaints within 12 months, with 57% of all complaints (100) finalised within 120 days. The average time taken to finalise complaints was 207 days.

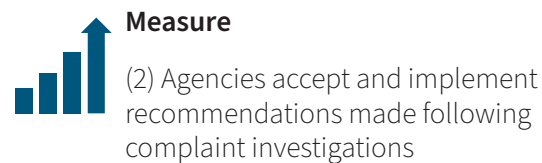
In 2020–21, the OAIC received 151 complaints about actions taken by agencies when handling FOI requests, an increase of 39% compared to 2019–20.

Included in the number of finalised complaints are 76 which were either conciliated or withdrawn. Another 3 were finalised under s 86 of the FOI Act. This includes 2 complaints where recommendations were made under s 88 of the FOI Act, which requires agencies to implement recommendations made by the Information Commissioner.<sup>5</sup> The recommendations are published on the OAIC's website under Freedom of information investigation outcomes.

The most common complaints about the handling of FOI requests by agencies continue to be about delays in processing. Other complaints include:

- how agencies conduct consultation under practical refusal provisions
- how agencies conduct third-party consultations
- transfer of requests under s 16 of the FOI Act
- imposition of charges to process FOI requests
- agencies' compliance with the Information Publication Scheme (IPS) and disclosure logs
- not acknowledging FOI requests within 14 days.

<sup>5</sup> A complaint may have a number of issues.



Achieved

All recommendations made at the conclusion of investigations during the 2020–21 reporting period have been accepted and have been or are being implemented by the relevant respondent agencies.

A summary of the implementation of the recommendations made by the Information Commissioner is published on the OAIC's website under Freedom of information investigation outcomes.

### Right to review

Under s 69 of the FOI Act, the Information Commissioner has power to investigate agency actions about the handling of FOI matters. Part 11 of the FOI Guidelines explains that where IC review is available, it is the Information Commissioner's view that making an FOI complaint is not the appropriate mechanism to resolve the matter, unless there is a special reason to undertake an investigation.

In 2020–21, 27 complaints were declined on the basis that the complainant has or had a right to have the action reviewed by the agency, a court or a tribunal, or by the Information Commissioner which they had not exercised when it would be reasonable to do so (s 73(b)).



## Extensions of time

The FOI Act sets out timeframes within which agencies and ministers must process FOI requests. When an agency or minister is unable to process an FOI request within the statutory processing period, they may apply for an extension of time from the FOI applicant or the Information Commissioner.

If the applicant agrees to an extension of time in writing, the agency or minister must advise the Information Commissioner of the agreement to extend the statutory processing time as soon as practicable.

An agency or minister can apply to the Information Commissioner for an extension of the processing period if they can demonstrate that processing the FOI request will take longer than the statutory timeframe because it is voluminous or complex in nature (s 15AB of the FOI Act).

An agency or minister can also apply to the Information Commissioner for an extension of the processing period where they have been unable to process the request within the statutory timeframe, and are deemed to have made a decision refusing the FOI request (ss 15AC, 51DA and 54D of the FOI Act). See Table 2.8.1. The OAIC aims to respond to these applications within 10 calendar days.

Overall, we received 13% fewer notifications and applications for extensions of time during this financial year when compared with 2019–20. In relation to extension of time applications requiring a decision of the Information Commissioner's delegates (ss 15AB, 15AC, 51DA and 54D of the FOI Act), there was a 29% decrease in the number of applications received during this financial year compared to 2019–20. See Table 2.8.2.

**Table 2.8.2: FOI extension of time (EOT) notifications and requests received and closed**

Year	2018–19	2019–20	2020–21
Received	3,784	4,244	3,692
Closed	3,779	3,844	4,102

During this reporting period, when applying for extensions of time, agencies continued to provide reasons relating to the COVID-19 pandemic as a cause for delay in processing FOI requests, particularly during the various lockdown periods experienced across Australia. Reasons included redeployment of staff to frontline services and an inability to access hardcopy files at offsite storage facilities.

**Table 2.8.1: FOI extensions of time (EOT) notifications and requests closed, by type**

Request type	2018–19	2019–20	2020–21
Section 15AA (notification of EOT agreements between agency and applicant)	2,959	2,393	3,029
Section 15AB (request to OAIC by agency where voluminous or complex)	562	786	507
Section 15AC (request to OAIC by agency where deemed refusal decision)	178	492	405
Section 51DA (request to OAIC by agency for EOT for dealing with amendment/annotation request)	1	5	2
Section 54D (request to OAIC by agency for EOT where deemed affirmation on internal review)	37	80	57
Section 54T (request to OAIC for EOT for person to apply for IC review)	41	88	102
<b>Total</b>	<b>3,778</b>	<b>3,844</b>	<b>4,102</b>

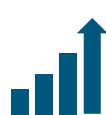
## Vexatious applicant declarations

The Information Commissioner has the power to declare a person to be a vexatious applicant if they are satisfied that the grounds in s 89L of the FOI Act exist.

In 2020–21, the OAIC received one application from an agency under s 89K of the FOI Act seeking to have a person declared a vexatious applicant. During 2020–21, the Information Commissioner finalised 3 applications, making 2 declarations under s 89K of the FOI Act and declining one application.<sup>6</sup>

Declarations are available in the Australian Information Commissioner (AICmr) database published on AustLII.

## Indicator 2.9: The OAIC promotes awareness of privacy and access to information



### Measure

The OAIC leads campaigns such as International Access to Information Day and Privacy Awareness Week



### Target: Qualitatively demonstrated

Achieved

### International Access to Information Day 2020

The OAIC's International Access to Information Day 2020 campaign ran from 26 August to 6 October 2020, raising awareness about information access through a campaign website and digital promotion. The website hosted promotional materials, FOI videos, infographics with tips for applicants and agencies, and links to useful resources. The OAIC sent 9 alerts to Information Contact Officers Network (ICON) members and Australian Government agencies, and distributed a supporter toolkit to them to mark International Access to Information Day.

Originally scheduled to coincide with the International Access to Information Day campaign, a virtual ICON information session was delayed until 4 November 2020 due to a global Microsoft outage. The webinar was well attended, with presentations from Australian Information Commissioner and Privacy Commissioner Angelene Falk, Deputy Commissioner Elizabeth Hampton and subject matters experts from the OAIC.



<sup>6</sup> One vexatious applicant declaration decision is awaiting publication.



## Privacy Awareness Week 2021

Privacy Awareness Week (PAW) is an annual initiative of the OAIC that highlights the importance of protecting personal information and promotes good privacy practice. The event is held in partnership with state and territory regulators and the OAIC.

PAW 2021 ran from 3 to 9 May, promoting the theme 'Make privacy a priority'. We achieved the highest number of PAW supporters to date – 629 – an increase of 15% compared to 2020 (549 supporters). We sent 7 supporter newsletters and our supporter toolkit, containing digital promotional materials, was downloaded 1,692 times. The OAIC campaign website recorded more than 24,000 page views, an 87% increase on the 2020 campaign site.

The 'Make Privacy a Priority' hashtag trended on Twitter in Australia twice during the week-long campaign, with total social media reach of over 527,000 users through OAIC-owned channels, a threefold increase from the previous year. The OAIC took part in 12 external events for public and private sector organisations as part of the campaign.



## Social media

The OAIC has grown its presence on social media in 2020–21 which has continued to be an important communication channel during the COVID-19 pandemic. We actively promoted awareness of privacy and information access rights through our social media channels, resulting in increased followers, page likes and post impressions across Twitter, Facebook and LinkedIn.

### Twitter

Growth has been steady throughout the year, with 6,340 followers at 30 June 2021. This is an increase of 9%. During the reporting period, we achieved nearly one million impressions.

### Facebook

Growth has been steady with 4,050 followers at 30 June 2021. This is an increase of 23%.

### LinkedIn

Our followers have grown rapidly on LinkedIn, increasing 39% to 4,988 at 30 June 2021.

### Information Matters

Our monthly Information Matters newsletter goes to more than 8,000 subscribers, an increase of 5% on 2019–20. It provides news about the latest guidance and resources published by the OAIC, information about consultations and other engagements, and links to decisions and submissions.

## e-learning programs

### Privacy in Practice course

Our e-learning course Privacy in Practice, launched in April 2020, was developed to help Australian Government staff understand the importance of privacy in their agency and how to meet their privacy obligations in their day-to-day work. In 2020–21 the course was completed by 8,696 people.

### Undertaking a Privacy Impact Assessment course

Our e-learning course Undertaking a Privacy Impact Assessment, launched in May 2017, provides information on conducting a PIA in easy-to-understand language. PIAs are an important component in the protection of privacy, and should be part of the overall risk management and planning processes of organisations and Australian Government agencies. In 2020–21 the course was completed by 1,060 people.

## Australian Community Attitudes to Privacy Survey 2020

The OAIC launched our Australian Community Attitudes to Privacy Survey on 24 September 2020. The findings provide a detailed picture of community views about the protection of personal information. Nearly 2,700 people took part in the survey, which examined attitudes on topics such as data practices, privacy reform, children's privacy and COVID-19.

Among the key findings:

- Community concerns about privacy are based on experience: 59% of Australians had a problem with how their data was used over the previous year, such as unwanted marketing communications or information being collected when it was not required.
- Australians are increasingly questioning data practices where the purpose for collecting personal information is unclear: 81% consider it a misuse for an organisation to ask for information that doesn't seem relevant to the purpose of the transaction, up 7% since 2017.
- Privacy is the leading consideration when choosing an app or program to download, ahead of quality, convenience and price, and 84% consider privacy extremely or very important when choosing a digital service.
- Australians trust health service providers the most when it comes to handling personal information, followed by government, and they trust social media the least.
- Parents are more concerned about their children's privacy than their own: 82% believe children must be empowered to use online services, but their data privacy must be protected.
- The community wants more information and clearer privacy policies to help them manage their privacy: 85% have a clear understanding of why they should protect their personal information but 49% say they don't know how.
- 84% think it is misuse of personal information when information is supplied for a specific purpose and used for another.



## Australian Government Privacy Officer training

In 2020–21, the OAIC pivoted from face-to-face to online training due to the COVID-19 pandemic. We developed a 2-hour webinar course, which is a condensed version of our full-day training course we had traditionally run in Canberra.

We ran 3 webinars which were all fully booked, engaging with 65 participants from 37 Australian Public Service agencies. The evaluation survey conducted following each webinar received positive feedback:

- 79% of participants rated the webinar 8 or above out of 10
- 91% of participants would recommend the webinar to others
- 76% of participants said their knowledge of privacy had increased as a result of the webinar.

Participants found the explanation of the role of the Privacy Officer under the Australian Government Agencies Privacy Code helpful, as well as content on conducting privacy impact assessments (PIAs), maintaining a PIA register and writing collection notices. Following this successful rollout, we are continuing to offer the webinar in 2021–22.

## Events

The OAIC participated in 40 speaking engagements in 2020–21, significantly more than the previous year when we participated in 25 events. Among the external events we participated in were:

- Law Council of Australia Business Law Section Privacy Law Seminar
- Council of Europe Data Privacy Day 2021: Asia Pacific Region event
- Association of Corporate Counsels GC100 meeting
- Tax Practitioners Board Preventing data breaches webinar
- Deloitte Australian Privacy Index 2020 launch webinar
- Australian Government Solicitor FOI and Privacy Forum.

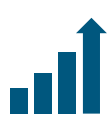
## Media enquiries

We received 147 media enquiries which is a 32% decrease compared to 2019–20.

**Table 2.9.1: Media enquiries**

Month	2019–20	2020–21
July	20	10
August	20	17
September	17	25
October	28	12
November	9	13
December	9	3
January	18	14
February	10	5
March	26	6
April	29	18
May	18	12
June	13	12
<b>Total</b>	<b>217</b>	<b>147</b>

## Indicator 2.10: The OAIC promotes awareness of CDR privacy rights



### Measure

Education and awareness materials are developed and promoted



### Target: Qualitatively and quantitatively demonstrated

Achieved

Since the launch of the Consumer Data Right in the banking sector on 1 July 2020, the OAIC has continued to develop and promote educational and awareness materials to ensure both consumers and regulated entities understand Consumer Data Right rights and obligations.

We have developed additional resources for consumers to consider whether it may be appropriate for them to make a complaint to the OAIC if they consider an entity has mishandled their data, and published new resources for participants on their key privacy obligations under the Consumer Data Right regulatory framework. Consumer Data Right privacy information for consumers was also translated into 10 community languages.

We featured Consumer Data Right resources in 8 issues of our Information Matters newsletter and 20 social media posts during 2020–21.

## Consumer Data Right resources for participants and consumers

During the reporting period, the OAIC worked closely with our co-regulator, the ACCC, to assess all contacts received via the CDR website. This includes 35 contacts which were referred to the ACCC, and 26 which were referred to the OAIC. A number of these contacts were found to relate to general privacy issues, not the Consumer Data Right. In total, the OAIC handled 16 CDR enquiries and one CDR complaint over the course of the year.

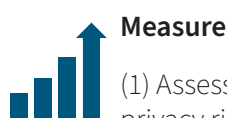
To assist consumers to understand whether the OAIC can investigate their CDR complaint, we developed a step-by-step guide which is available on our website. It complements information that sets out how to make a complaint to a CDR provider, what consumers can make a complaint about, and how we will investigate and resolve complaints.

The OAIC also published 2 updated versions of the Consumer Data Right Privacy Safeguard Guidelines. These provide guidance to participants in understanding and interpreting the 13 privacy safeguards under the Consumer Data Right. The first round of updates in July 2020 reflected minor amendments made to the CDR Rules. The second round of updates released in June 2021 reflected more substantial amendments to the *Competition and Consumer Act 2010* and the CDR Rules, including in relation to allowing amended consent, and transfer of CDR data between accredited persons.

We also published a *Guide to privacy for data holders* which outlines key privacy obligations for data holders in the CDR system, including obligations under the privacy safeguards and the CDR Rules.

Education and awareness materials were promoted through a dedicated section on the OAIC website, media releases, our monthly Information Matters newsletter and social media channels.

## Indicator 2.11: Australians are confident about the system of oversight of privacy and security of the COVIDSafe app



### Measure

(1) Assessment program identifies any privacy risks



### Target: Assessment program conducted and outcomes published

Achieved

In May 2020, the *Privacy Amendment (Public Health Contact Information) Act 2020* expanded the OAIC's assessment powers under s 33C of the Privacy Act. The OAIC was given the power to conduct an assessment of whether the acts or practices of an entity or a state or territory authority comply with Part VIIIA of the Privacy Act in relation to COVID app data.

In June 2020, we commenced the COVIDSafe Assessment Program which involves 5 assessments examining compliance and risk throughout the information lifecycle of COVID app data. In 2020–21, we finalised and published the report for Assessment 1 which examines access controls applied to the National COVIDSafe Data Store by the Data Store Administrator. Fieldwork has been undertaken for 3 of the 4 remaining assessments and these reports will be published in 2021–22. The final assessment examines compliance of the Data Store Administrator with the deletion and notification requirements in Part VIIIA which relate to the end of the pandemic.



### Measure

(2) Guidance to government, businesses and the community regarding COVIDSafe-related privacy law



### Target: Guidance material prepared and published

Achieved

During the reporting period, the OAIC developed and promoted COVIDSafe guidance to increase awareness

and understanding of the system's privacy protections and entities' obligations under the Privacy Act.

In December 2020, we published guidance for state and territory health authorities regarding COVIDSafe and COVID app data.

The OAIC has continued to provide advice and guidance to the Australian Government on the development and implementation of COVIDSafe privacy protections. This includes ongoing advice to the Department of Health regarding its updated privacy impact assessment for COVIDSafe, and we have continued to monitor implementation of the recommendations made in the department's original COVIDSafe privacy impact assessment.

We also respond to enquiries about COVIDSafe obligations via our email and telephone enquiry service.



### Measure

(3) Effective enquiry, complaint and data breach notification systems



### Target: Enquiry, complaint and data breach systems utilised

Achieved

Enquiries received during 2020–21 generally raised cross-jurisdictional issues relating to the use of QR code check-in apps issued by state and territory governments, the application of section 94H of the Privacy Act or the handling of COVID app data. Where appropriate, the OAIC provided general information to individuals about how the Privacy Act regulates the COVIDSafe app, and advice on lodging a complaint about a direction to use or download the COVIDSafe app. Information gathered from enquiries informed the development of guidance material.

During the reporting period the OAIC did not receive any privacy complaints about the COVIDSafe app.

Breaches of any of the COVIDSafe app-related provisions of the Privacy Act by the National COVIDSafe Data Store Administrator or a state or territory health authority are considered an 'eligible data breach' for the purposes of the NDB scheme.



While the OAIC did not receive any data breach notifications related to the COVIDSafe app in 2020–21, the OAIC has implemented systems and processes to ensure that any data breach

notifications that are received will be effectively and expediently registered, assessed, and – if warranted – referred for regulatory action.

## COVID-19 advice and guidance

The OAIC published and promoted a range of guidance and information relating to the COVID-19 pandemic during 2020–21. This includes 2 COVIDSafe reports, covering the periods from

May to November 2020, and November 2020 to May 2021, in accordance with s 94ZB of the Privacy Act which requires the OAIC to report on the performance of the Commissioner's functions and the exercise of the Commissioner's powers under or in relation to Part VIIIA of the Privacy Act.

**Table 2.11.1: COVID-19 related publications**

Title	Publication date
Draft guidance for digital check-in providers collecting personal information for contact tracing	28 August 2020
The COVIDSafe app and my privacy rights in 10 community languages	30 September 2020
Draft guidelines: Requirements to collect personal information for contact tracing purposes	20 November 2020
COVIDSafe report May–November 2020	23 November 2020
Guidance for state and territory health authorities regarding COVIDSafe and COVID app data	23 December 2020
Coronavirus (COVID-19) Vaccinations: Understanding your privacy obligations to your staff	23 February 2021
COVID-19: Vaccinations and my privacy rights as an employee	1 April 2021
COVIDSafe report November 2020–May 2021	21 June 2021

## COVIDSafe Assessment Program

The OAIC's COVIDSafe Assessment Program is examining:

1. Access controls applied to the National COVIDSafe Data Store by the Data Store Administrator.
2. Access controls applied to the use of COVID app data by state or territory health authorities.
3. The functionality of the COVIDSafe app against specified privacy protections set out under the COVIDSafe privacy policy and collection notices, and against the requirements of Part VIIIA of the Privacy Act.
4. The compliance of the Data Store Administrator with the data handling and deletion requirements under Part VIIIA.
5. The compliance of the Data Store Administrator with the deletion and notification requirements in Part VIIIA which relate to the end of the pandemic.



## Case Study: COVIDSafe Assessment 1

### Case Study 2.11.1: Assessment of COVIDSafe app, National COVIDSafe Data Store and Health Official Portal

This assessment identified 4 medium-level privacy risks and 2 low-level privacy risks associated with the COVIDSafe app, the National COVIDSafe Data Store and the Health Official Portal. These privacy risks relate to:

- documentation of key governance systems and practices
- documentation and delivery of training in relation to the handling of COVID app data
- access security – in particular, documentation relating to logical access controls applied to the National COVIDSafe Data Store.

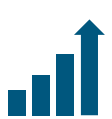
The OAIC made 4 recommendations and 2 suggestions in the report to address these privacy risks. The Department of Health, as the policy owner of the COVIDSafe System, and the Digital Transformation Agency, as the Data Store Administrator, were the targets of this assessment. All of our recommendations and suggestions were accepted in full.

## Strategic Priority 3

### Encourage and support proactive release of government-held information

The OAIC champions making government-held information available for use as a national resource by developing initiatives that support the proactive release of government-held information. Proactive release of government-held information supports public trust and engagement in government decision making and innovation and may reduce FOI requests.

#### Indicator 3.1: More government-held information is published proactively



##### Measure

(1) The OAIC actively promotes proactive publication through agency engagement



**Target: The OAIC uses the Information Contact Officers Network to promote the benefits of proactive publication of government-held information**

Achieved

The Information Contact Officers Network (ICON) is for Australian Government FOI practitioners. During the reporting period ICON grew by 20% from 573 to 685 members.

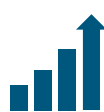
We held 2 virtual ICON information sessions in 2020–21, which reached more FOI practitioners from around Australia than in-person events held in previous years. The first session held on 4 November 2020 had 67 participants and the second session held on 22 April 2021 had more than 100 staff from government agencies.

The ICON sessions covered a range of topics including:

- updates on recent developments and trends from the Information Commissioner
- insights from IC reviews and investigations
- managing applications for extensions of time
- new information access resources
- agency FOI statistics.

We sent 11 Information Matters newsletters and 9 alerts to ICON members during the year. We also marked International Access to Information Day on 28 September 2020 by issuing a joint statement with members of the Association of Information Access Commissioners (AIAC) from Australia and New Zealand on the importance of public access to information and the proactive publication of information as governments respond to the COVID-19 pandemic and other emergencies. The OAIC's International Access to Information Day campaign ran from 26 August to 6 October 2020, raising awareness about information access through a campaign website and digital promotion (see page 46).





### Measure

(2) The OAIC actively promotes proactive publication through development of resources and guidance



### Target: The OAIC develops resources to help agencies make more information available to the public

Achieved

The OAIC launched FOI Essentials, a digital toolkit for FOI decision makers in Australian Government agencies and ministers' offices, in September 2020. The toolkit helps FOI decision makers to:

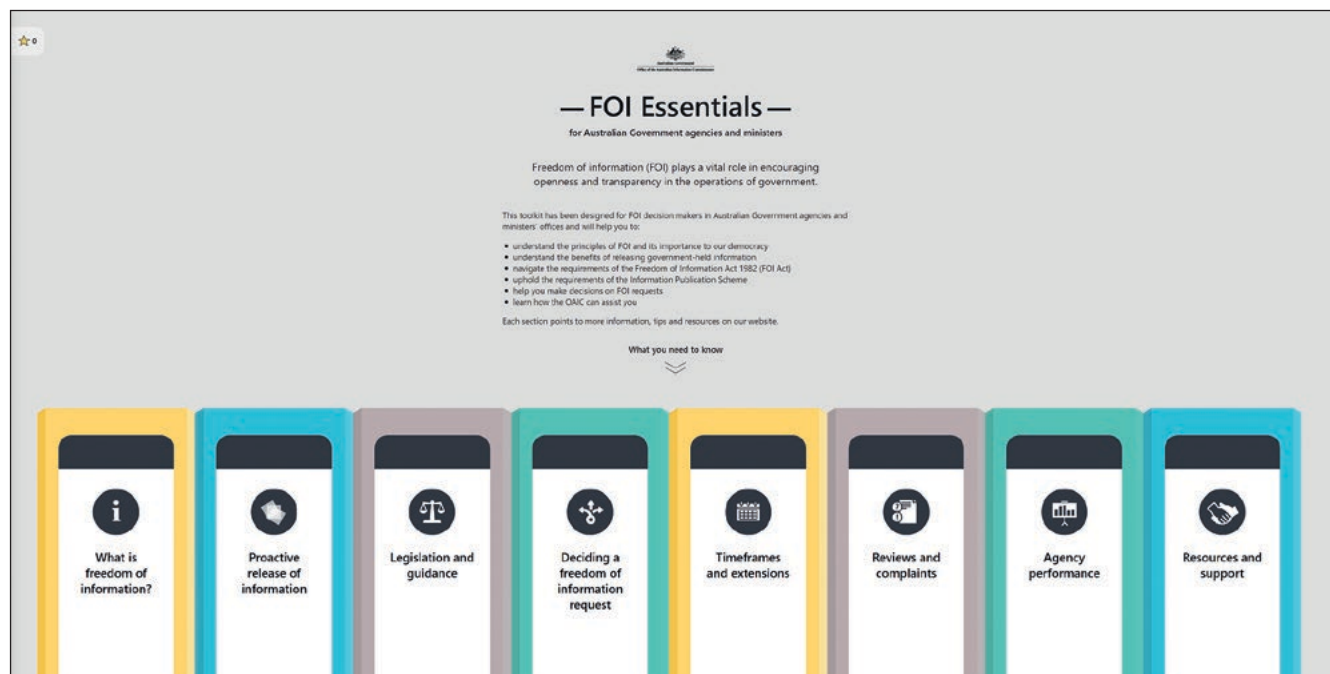
- understand the principles of FOI and its importance to our democracy
- understand the benefits of releasing government-held information
- navigate the requirements of the FOI Act

- uphold the requirements of the IPS
- make decisions on FOI requests
- understand how the OAIC can assist.

We published information for individuals on requesting official documents held by a minister and how to access Australian Government information.

In 2020–21, we updated sections of the FOI Guidelines including Part 4 (Charges for providing access), Part 10 (Review by the Information Commissioner) and Part 11 (Investigations and complaints). We also published a consultation draft on revisions to Part 9 (Internal review).

In August 2020, we published a position paper on disclosure of public servants' names and contact details, which identifies some of the issues agencies should consider when deciding whether to exempt the names and contact details of public servants in response to FOI requests.



## FOI statistics received from Australian Government agencies and ministers

Agencies and ministers must report FOI processing statistics to the OAIC every 3 months and at the end of the financial year.

These reports show the number of FOI requests received across Australian Government agencies decreased by 16% from 41,333 in 2019–20 to 34,797 in 2020–21. Requests for personal information were 20% lower than 2019–20. However, requests for other (non-personal) information were 4% higher than 2019–20.

In 2020–21, 26,715 or 77% of all FOI requests were for documents containing personal information. This is a lower proportion than in previous years when between 81% (2019–20) and 87% (2015–16) of all requests were for personal information.

In 2020–21, the Department of Home Affairs, Services Australia and the Department of Veterans' Affairs together continued to receive the majority of FOI requests (68% of the total). Of these, 89% were requests for access to personal information.

The percentage of FOI requests processed within the applicable statutory time period decreased from 79% in 2019–20 to 77% in 2020–21. There has been a decrease in timeliness of decision making over the past 3 years from 2018–19 when 83% of all decisions were decided within the applicable statutory time period.

The percentage of FOI requests granted in full decreased from 47% of all requests in 2019–20 to 41% in 2020–21; the percentage granted in part increased from 38% in 2019–20 to 41%; and the

percentage of requests refused increased from 15% of all FOI requests in 2019–20 to 18% in 2020–21.

The personal privacy exemption in s 47F of the FOI Act remains the most claimed exemption (38% of all exemptions claimed – the same as in 2019–20).

Agencies and ministers issued 3,143 notices advising of an intention to refuse a request for a practical refusal reason in 2020–21. This is a 17% decrease on the number issued in 2019–20. Of these requests, 48% were subsequently refused or withdrawn; that proportion was 57% in 2019–20.

There was a 7% decrease in the total charges notified in 2020–21 (\$247,572) and an 8% decrease in the total charges collected by agencies (\$81,353).

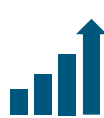
The total reported costs attributable to processing FOI requests in 2020–21 were \$61.48 million, a 4% decrease on 2019–20 (\$63.9 million).

The total number of entries added to agency website disclosure logs in 2020–21 (2,480) is 27% higher than 2019–20, when 1,949 new entries were added.

There was a 9% increase in internal review applications in 2020–21. Of the 968 internal review decisions, 492 (51%) affirmed the original decision, 135 (14%) set aside the original decision and granted access in full, 261 (27%) granted access in part, 7 (1%) granted access in another form, 14 (1%) resulted in lesser access and applicants withdrew 40 applications (4%) without concession by the agency. Agencies reduced the charges levied as a result of internal review in 19 reviews (2%).

For more information on FOI statistics received from Australian Government agencies and ministers see Appendix E.

### Indicator 3.2: Increase community awareness and understanding of information access rights



#### Measure

The OAIC will develop resources to help the community understand the right to access information



**Target: Publish practice direction to assist members of the public better understand the IC review process**

Achieved

In 2020–21 we published a direction on procedures to be followed by applicants in IC reviews, for consultation. The final procedure direction and a summary guide for applicants will be published in the first quarter of 2021–22, along with relevant updates to the FOI Guidelines.

### Disclosure logs

During 2020–21, the OAIC continued its desktop longitudinal review of agency compliance with the disclosure log requirements in s 11C of the FOI Act. The results of this review, along with relevant updates to the FOI Guidelines, are being finalised and will be published in 2021–22.

### Information Publication Scheme

Proactively making more information available to the public supports the object of the FOI Act to make information available easily, quickly and at the lowest cost. It also has the potential to reduce the number of FOI requests made to Australian Government agencies.

The OAIC continues to promote the Information Publication Scheme (IPS) to agencies to encourage the publication of a wide range of corporate information on agency websites. Our focus this year has been on emphasising that the IPS does not limit the information that can be published to only the information required to be published under s 8(2) of the FOI Act, but authorises the publication of any other information (see s 8(4) of the FOI Act).

The Information Commissioner also participated in the Office of the Victorian Information Commissioner's *Proactive and informal release of information in the Victorian public sector* discussion paper.

The OAIC has an ongoing role in Australia's Open Government Partnership, as a member of the working group for the third National Action Plan. The third National Action Plan includes an 'Open by Design' commitment to develop a nationally consistent approach to the proactive release of information.

## Strategic Priority 4

### Contemporary approach to regulation

The OAIC takes a contemporary approach to our regulatory role in promoting and upholding Australia's privacy and freedom of information laws. This means we engage with, and are responsive to, the community's expectations of its regulatory bodies.

The OAIC is committed to developing a capable, multidisciplinary workforce with a breadth of technical skills to provide guidance and advice and to take regulatory action.

#### Indicator 4.1: The OAIC takes appropriate regulatory action in relation to strategic privacy and access to information risks



##### Measure

The OAIC utilises the range of regulatory powers and outcomes provided by the Privacy and FOI Acts



##### Target: Qualitatively and quantitatively demonstrated

Achieved

#### Privacy regulatory action policy

Privacy complaints which cannot be finalised through early resolution and conciliation processes may be referred for further investigation. In appropriate matters, whether arising from a complaint or a CII, the Commissioner will decide to take further regulatory action. For instance, the Commissioner may issue a determination under s 52 of the Privacy Act, commence civil penalty proceedings, or accept an enforceable undertaking.

This discretion to select matters that warrant privacy regulatory action, and to decide what action to take, involves a consideration of the risk that the acts or practices in question pose to privacy, any harm caused, and the opportunity that taking action

presents. Where appropriate the OAIC may issue guidance to respond to a regulatory concern.

This approach allows the Commissioner to have regard to remedying individuals' grievances, deterring entities from future breaches and educating the privacy community and APP entities in relation to their information handling practices, including where the application of privacy law requires clarification.

In October 2020, the OAIC established the RAC to provide strategic, consistent and organisation-wide advice to the Commissioner in relation to the exercise of her regulatory discretion in significant privacy investigations. For more detail on how the RAC operates and recommends the most appropriate regulatory response to the Commissioner, see Indicator 2.5 on page 38. Following advice from the RAC, the Commissioner has approved the issuing of requests to entities to make submissions regarding proposed directions to notify under the NDB scheme and opened a number of CIIs.

#### FOI regulatory action policy

By using the range of powers available under the FOI Act, the OAIC ensures that the regulatory action is appropriate and the powers under the FOI Act are exercised to the extent for the benefit of the community.

The Information Commissioner draws upon sources of information to assist in the assessment of risk

when considering whether to exercise regulatory powers. These include monitoring of agencies' reportable statistics on the processing of FOI requests, and information gathered through the extension of time, IC review and FOI complaints functions.

The Information Commissioner exercises powers under Part VIIB of the FOI Act to investigate complaints made about agencies in the performance of or exercising functions under the FOI Act. This power includes the ability to investigate complaints made by individuals under s 70 of the FOI Act as well as the ability to commence investigations on her own initiative (CII) (s 69(2)). In 2020–21 the Information Commissioner finalised 3 investigations of FOI complaints under s 86 of the FOI Act and finalised one CII into Home Affairs' compliance with statutory processing periods for processing FOI requests for non-personal information. In order to drive better practice and increase transparency, the OAIC publishes outcomes and recommendations on our website, allowing all agencies to draw upon the finding to improve their own practices and policies and meet their obligations under the FOI Act.

The Information Commissioner exercises powers under Part VII of the FOI Act to review decisions made by agencies and ministers. During the reporting period the Information Commissioner issued 54 IC review decisions under s 55K of the FOI Act. The decisions assist agencies and ministers to interpret the FOI Act and provide guidance on the exercise of their powers and functions. The decisions are published on the OAIC website. The OAIC also published a consultation draft of the Direction as to certain procedures to be followed by applicants in Information Commissioner reviews.

To assist the regulated community to further comply with their obligations under the FOI Act, the Information Commissioner issues Guidelines under s 93A of the FOI Act which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act. In 2020–21, the OAIC updated sections of the FOI Guidelines including Part 4 (Charges for providing access), Part 10 (Review by the Information Commissioner) and Part 11 (Investigations and complaints). The

OAIC also published a consultation draft on revisions to Part 9 (Internal review).

## Privacy assessments

During this reporting period, the OAIC assessed privacy practices in the government, telecommunications and health sectors, with 25 individual entities assessed and 7 assessments closed in 2020–21.

In 2020–21 we commenced assessments that examined a large cohort of entities, including all Australian Government agencies covered by the Privacy Act and a selection in the digital health sector. Our assessments ranged in scope from obligations under APP 1 (open and transparent management of personal information), APP 5 (notification of the collection of personal information) and APP 11 (security of personal information) to compliance with Part VIIIA of the Privacy Act and record keeping obligations under the *Telecommunications Act 1997*.

We used a range of methods to conduct our assessments such as desktop reviews, comprehensive reviews of policy documents, in person and remote interviews with staff and site inspections. In response to logistical challenges to fieldwork caused by the COVID-19 pandemic such as lockdowns, travel restrictions, border closures and social distancing, we adapted our approach to assessment fieldwork. Where assessment scope and methodology permitted, fieldwork interviews were conducted remotely using audio and video conferencing.

The businesses and government agencies we assessed accepted all our recommendations, except for 3 recommendations which were accepted in part.

## COVIDSafe Assessment Program

In May 2020, in response to the COVID-19 pandemic, the *Privacy Amendment (Public Health Contact Information) Act 2020* expanded the OAIC's assessment powers to include the power to conduct

an assessment of whether the acts or practices of an entity or a state or territory health authority comply with Part VIIIA of the Privacy Act in relation to COVID app data. In 2019–20, we began the COVIDSafe Assessment Program in relation to the COVIDSafe app. Four assessments were commenced and one was completed in 2020–21.

## Government

### *ACT Government*

Under our Memorandum of Understanding (MOU) with the ACT Government we finalised our assessment of Access Canberra and published the report in April 2021. In 2020–21 we commenced an assessment of Housing ACT which we will finalise in 2021–22. For more information see Appendix C.

### *Australian Government PIA register assessment*

In May 2021, we commenced an assessment of Australian Government agencies' compliance with the requirement to publish a PIA register under s 15.1 of the Australian Government Agencies Privacy Code. A PIA is a systematic assessment of a project that identifies privacy impacts and sets out recommendations for managing, minimising or eliminating that impact. PIAs are an important component in the protection of privacy and should be part of an agency's risk management and planning processes. The assessment will involve a desktop review of most agency websites which will examine compliance with the PIA register requirements of the Code. We will publish our findings on our website by portfolio throughout 2021–22.

## Digital health assessments

Health information is considered particularly sensitive. This sensitivity has been recognised in the *My Health Records Act 2012* and the *Healthcare Identifiers Act 2010*, which regulate the collection, use and disclosure of personal information, and give the Information Commissioner a range of enforcement powers. This sensitivity is also recognised in the Privacy Act which treats health information as 'sensitive information'.

In 2020–21, we finalised 2 assessments relating to the My Health Record system that began in 2019–20 and finalised one assessment which began in 2018–19. We commenced one assessment in 2020–21 which will be finalised in 2021–22. For more information see the *Annual report of the Australian Information Commissioner's activities in relation to digital health 2019–20* on the OAIC website.

## Passenger name record data

The transfer of European Union (EU) passenger name record (PNR) data by air carriers to Home Affairs is governed by an agreement between Australia and the EU. Home Affairs receives EU PNR data from air carriers when information necessary for processing or controlling a passenger's air travel reservation for a flight to, from or through Australia is processed in the EU. During the reporting period, the OAIC completed one assessment commenced in 2019–20 in relation to Home Affairs' handling of PNR data and will commence another assessment of Home Affairs that will be completed in 2021–22.

## Section 309 of the Telecommunications Act

In 2020–21, the OAIC commenced inspections of carriers and carriage service providers compliance with Part 13, Division 5 of the *Telecommunications Act 1997*. This Part requires carriers and carriage service providers to make records of certain disclosures of personal information, including disclosures of telecommunications data collected and retained under the data retention scheme, to law enforcement agencies. We will finalise these inspections and publish a summary report in 2021–22.

## Consumer Data Right

As the regulator for the privacy aspects of the Consumer Data Right, s 56ER of the *Competition and Consumer Act 2010* authorises the OAIC to conduct assessments on Consumer Data Right participants to ensure they are handling CDR data in accordance with the privacy safeguards, or privacy or confidentiality related CDR Rules. In December 2020, following the launch of the Consumer Data



Right in the banking sector, the OAIC commenced our first Consumer Data Right assessment that considers 4 data holders' compliance with Privacy Safeguard 1, which relates to the open and transparent management of CDR data. We will finalise this assessment in 2021–22.



## Case Study: My Health Record assessments

### Case Study 4.1.1: Privacy assessment of Chamonix and Telstra Health mobile applications

These assessments were conducted pursuant to the MOU between the OAIC and the Australian Digital Health Agency which requires the OAIC to conduct assessments in relation to the My Health Record system and the Healthcare Identifiers Service.

The scope of the assessments considered the handling of personal information in relation to the My Health Record system by Chamonix and Telstra Health and their respective mobile applications Healthi and HealthNow. The assessments considered compliance with APP 1.2 (open and transparent management of personal information) and APP 5 (notification of the collection of personal information).

We reviewed relevant policies and procedures provided by Chamonix and Telstra Health and interviewed key members of staff through videoconferencing platforms in September to October 2020.

Telstra Health's HealthNow app provides a range of eHealth services to users, including the facilitation of 'view-only' access to a user's My Health Record information. Chamonix's Healthi app only provides 'read-only' access to a user's My Health Record and does not have any other functionality.

The OAIC found that Telstra Health is taking reasonable steps to document and implement practices, procedures and systems to ensure compliance with the APPs, and to enable the effective handling of privacy inquiries and complaints in relation to the HealthNow app.

We also found that Telstra Health is taking reasonable steps to notify users of the HealthNow app of APP 5 matters, and ensure users understand APP 5 matters in relation to the collection of personal information by the app.

We made one recommendation that Telstra Health revise the HealthNow Privacy Statement and in-app notifications to clearly delineate between the collection, use and disclosure of My Health Record data, and the collection, use and disclosure of other types of personal information collected by the app. Telstra Health accepted the recommendation.

We found that Chamonix has taken reasonable steps to document its information handling policies, practices and procedures, as well as notify individuals of the collection of personal information. However, we also identified medium-level privacy risks associated with the handling of personal information through its Healthi app. The OAIC made 4 recommendations and some suggestions to address these privacy risks. These included that Chamonix:

- regularly evaluate its internal policies and procedures
- implement regular and mandatory privacy refresher training
- include an APP 5 collection notice in relation to personal information collected via the Healthi webform or via email
- ensure that the Healthi APP 5 collection notice covers all APP 5 matters.

Chamonix accepted the recommendations.

## Data matching

We perform several functions to help government agencies understand their privacy requirements and adopt best privacy practice when undertaking data-matching activities.

Data matching is the process of bringing together data sets from different sources and comparing those data sets with the intention of producing a match. Several government agencies use data matching to detect non-compliance, identify instances of fraud and recover debts owed to the Australian Government. For example, to identify individuals or businesses that may be under-reporting income or turnover, the Australian Taxation Office (ATO) may match tax return data with the data provided by banks.

Government agencies that carry out data-matching activities must comply with the Privacy Act. The *Data-matching Program (Assistance and Tax) Act 1990* (Data-matching Act) authorises the use of tax file numbers in data-matching activities undertaken by specific agencies. Data matching raises privacy risks because it involves analysing personal information about large numbers of people, the majority of whom are not under suspicion of non-compliance.

## Statutory data matching

The Information Commissioner has statutory responsibilities under the Data-matching Act. The Data-matching Act authorises the use of tax file numbers in data-matching activities by the Department of Human Services (DHS), Veterans' Affairs and the ATO.

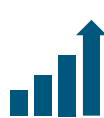
In previous financial years, we have inspected DHS's data-matching records to make sure they comply with the requirements of the Data-matching Act. Agencies continue to rely less on data matching using tax file numbers. In 2020–21, we focused on providing advice and oversight of data-matching activities outside the Data-matching Act.

## Data matching under voluntary guidelines

We administer the Guidelines on data matching in Australian Government Administration, which are voluntary guidelines to help government agencies adopt appropriate privacy practices when undertaking data-matching activities not covered by the Data-matching Act. In this financial year we reviewed 10 data-matching program protocols submitted by agencies including Services Australia and the ATO. We also provided advice on 3 occasions regarding protocols generally to the Fair Work Ombudsman and Services Australia.



## Indicator 4.2: The OAIC engages with domestic and international counterparts on regulatory policy and practice



### Measure

The OAIC collaborates on policy development, shares intelligence and participates in forums



### Target: Qualitatively demonstrated

Achieved

### Engagement with domestic networks

The OAIC is a member of Privacy Authorities Australia (PAA) which seeks to increase jurisdictional cooperation and address policy challenges that cross borders or involve complex systems and technologies. The Information Commissioner and OAIC staff attended 2 PAA meetings during 2020–21, including a virtual meeting hosted by the Information and Privacy Commission of New South Wales in June 2021. The OAIC also participated in the PAA Privacy Policy Group and Privacy Complaints and Enforcement Group, and acted as the secretariat for the newly formed PAA Communications Working Group.

The OAIC met regularly with representatives from the ACCC, the Australian Communications and Media Authority and the Office of the eSafety Commissioner to share information about policy and enforcement matters of mutual interest. We also worked with the ACCC, eSafety and Australian Cyber Security Centre on issues related to security, privacy, safety and preventing scams.

The ACCC and the OAIC are co-regulators in relation to the Consumer Data Right. The OAIC worked closely with the ACCC and the Treasury during the reporting period to implement the Consumer Data Right in the banking sector.

## Domestic networks

### Privacy Authorities Australia

Privacy Authorities Australia (PAA) is a group of Australian privacy authorities who meet regularly to promote best practice and consistency of privacy policies and laws. PAA also collaborates on Privacy Awareness Week, held in May each year, to raise awareness of privacy rights and the protection of personal information. See Privacy Awareness Week 2021 on page 47.

### National COVID-19 Privacy Team

In March 2020, the OAIC convened a National COVID-19 Privacy Team, consisting of the OAIC and state and territory privacy regulators, to respond to personal information handling proposals with national privacy implications. The National COVID-19 Privacy Team continues to meet regularly to consider and provide advice to government on new and emerging privacy risks associated with the pandemic.

## OAIC networks

The OAIC convenes local networks for privacy and FOI practitioners to engage with us and stay up to date with regulatory developments.

### Privacy Professionals Network

The Privacy Professionals Network (PPN) is for public and private sector privacy professionals. Its membership grew during this reporting period by 20% from 3,865 to 4,140 members. We sent a monthly newsletter to all PPN members and one targeted alert during the reporting period.

### Information Contact Officers Network

The Information Contact Officers Network (ICON) is for Australian Government FOI practitioners. At the end of this reporting period there were 687 ICON members.

We held 2 virtual ICON information sessions during the reporting period. The first session held on 4 November 2020 had 67 participants and the second session held on 22 April 2021 had more than 100 staff from government agencies.

### Engagement with international networks

The OAIC continued engagement with key counterparts under our existing MOUs with the UK ICO, the Data Protection Commissioner of Ireland and the Personal Data Protection Commission of the Republic of Singapore.

During the reporting period, the OAIC participated in the 42nd GPA conference from 12 to 14 October 2020. Commissioner Angelene Falk led the adoption of 2 resolutions at the conference. The first seeks to maximise the voice of the GPA on emerging global issues and the second focuses on the development and use of facial recognition technology.

The Commissioner was a signatory to a statement by the Executive Committee of the GPA on the importance of privacy by design in the sharing of health data for domestic or international travel

requirements during the COVID-19 pandemic. See Global Privacy Assembly on page 27.

We also attended 2 APPA forums. In June 2021, the OAIC attended the 55th APPA forum hosted by the PIPC of the Republic of Korea, engaging in discussions on the new normal in a post-COVID-19 world, artificial intelligence and formulating global standards in privacy. In December 2020, we attended the 54th APPA forum hosted by the Office of the Victorian Information Commissioner where we presented on the findings from the Australian Community Attitudes to Privacy Survey (see page 48). See Asia Pacific Privacy Authorities on page 27.

In June 2021, the Commissioner led the adoption of a resolution at the International Conference of Information Commissioners (ICIC) 12th annual conference hosted by the Brazilian Office of the Comptroller General. The resolution called for the proactive publication of information relating to the COVID-19 pandemic and was adopted unanimously. A joint statement on proactive publication was also published on the ICIC's website.

The OAIC works with other members of the AIAC to identify trends and issues affecting information access rights in Australia and New Zealand. During 2020–21, AIAC members issued a joint statement to mark International Access to Information Day on 28 September, acknowledging the importance of public access to information and proactive publication of government information in building community trust in times of crisis and beyond.

The OAIC also engages with a broad range of international stakeholders to promote and uphold privacy and information access, including civil society organisations, the international business community and overseas government organisations. Many nations and regions adopting new privacy or information access laws or creating privacy and information access regulatory regimes seek assistance and information about best practice regulatory approaches from jurisdictions with established laws and frameworks. From time to time, we are also contacted by regulators from jurisdictions with established laws and frameworks seeking our views on specific issues.

## Access to information networks

### International Conference of Information Commissioners

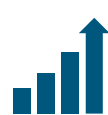
The International Conference of Information Commissioners (ICIC) is a global forum which connects information commissioners, ombudsmen and other bodies charged with overseeing the implementation of access to information legislation. Members work together to foster the protection and promotion of access to public information as a fundamental pillar to social, economic and democratic engagement.

The ICIC's mission is to share knowledge and best practices, build capacity, and help identify what is needed for global progress. The ICIC seeks to act as a collective voice to improve people's right to public information and their ability to hold to account bodies that provide public functions.

### Association of Information Access Commissioners

The Association of Information Access Commissioners (AIAC) is an Australian and New Zealand network comprising information access authorities who administer FOI legislation. The aim of the network is to exchange information and promote best practice in information access policies and laws.

## Indicator 4.3: Improved employee engagement



### Measure

Positive rates against APS Employee Census (Strive, Stay, Say index)



### Target: Improvement on previous year (positive variance)

Achieved

The OAIC's 2020 Australian Public Service Employee Census results demonstrate our staff feel highly engaged and committed to the OAIC's goals and strongly believe in our organisational purpose and objectives. We achieved a 79% response rate which was a 14% increase on the previous year. There was improvement across a number of areas, including internal communications and management.

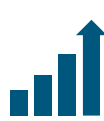
Highlights of the survey included:

- 75% overall employee engagement score (4% increase)
- 91% believe strongly in the purpose and objectives of OAIC (up 7%)
- 96% are happy to 'go the extra mile' (up 3%).

The delayed release of the 2020 census due to the COVID-19 pandemic meant there was a shorter period than normal in 2020–21 for the OAIC to identify and implement remedial strategies to address issues arising.

While there was a 15% improvement in satisfaction with the way Senior Executive Service (SES) communicate with employees (53%) and 10% improvement in perceptions that the SES lead and manage change (58%), both these measures remain below the APS average. In response, the OAIC implemented and continues to run a leadership development program.

#### Indicator 4.4: Increased staff retention



##### Measure

Reduced staff turnover and increased internal mobility



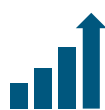
**Target: Align with APS Employee Census rates for workforce mobility**

Achieved

In the 2020–21 reporting period, the retention of our talent remained steady with an overall attrition rate of 18%, which was slightly higher than the small agency average of 16.7% according to the Australian Public Service Employment Database figures for 2020.

In 2020–21, our People and Culture function supported a structured approach to building a cohesive workforce to deliver our strategic priorities and regulatory functions. Mobility across the OAIC also continued with intra-team and intra-agency temporary and permanent transfers. Over the year, there were almost 20 mobility moves consisting of internal branch transitions and transfers from other APS agencies. These moves provided opportunities for career development and enhanced knowledge and skills across branches and other agencies.

#### Indicator 4.5: Attracting high-quality applicants



##### Measure

OAIC recruitment activities result in appointment of a candidate and an order of merit

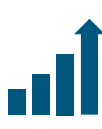


**Target: 90% of recruitment activities result in appointment and an order of merit**

Achieved

Throughout 2020–21, the OAIC undertook 21 recruitment processes and onboarded 30 ongoing staff. The OAIC also used recruitment processes to establish merit pools of suitable candidates to fill future vacancies.

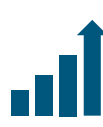
#### Indicator 4.6: Staff capability map supports the full range of OAIC functions

**Measure**  
 The OAIC uses staff capability map to support delivery of full range of functions

**Target: Recruitment and training aligned to staff capability map**  
 Not achieved

The OAIC continues to build internal capability across several areas including investigation and enforcement, leadership and governance, and information management. Over the course of 2020–21, resourcing challenges prevented the implementation of a formalised approach to capability investment through the development of a staff capability map. The OAIC aims to develop a revised capability approach in 2021–22 to ensure our needs for recruitment and training in areas of emerging technical capability requirements are met into the future.

#### Indicator 4.7: Mature the OAIC data management capability to understand and address emerging privacy and enterprise risks

**Measure**  
 Timely, accurate and reliable data supports core business

**Target: Data management complies with OAIC data strategy**  
 Achieved

In 2020–21, the OAIC continued to increase its reporting capability. Automated quarterly reports measuring performance against the OAIC Portfolio Budget Statement (PBS) targets are provided to the OAIC Executive and Audit Committee.

During 2020–21, we improved our reporting processes by replacing manual with automated reports. A total of 37 reports were created using data from the OAIC's case management system. This initiative enabled us to leverage our system and improve our performance, providing greater and more granular visibility of our performance against key deliverables across the organisation. Together, these reports provide managers with timely information and enable them to identify and manage emerging issues and risks and continue to improve efficiency.





## Part 3

### Management and accountability

Corporate governance .....	70
External scrutiny .....	71
People and Culture .....	73
Procurement .....	77
Other requirements .....	79

## Corporate governance

Setting strategic direction, implementing effective policies and processes, and monitoring progress are key elements of our corporate governance framework.

### Enabling legislation

The Office of the Australian Information Commissioner (OAIC) was established in November 2010 as an independent statutory agency under the *Australian Information Commissioner Act 2010* (AIC Act). We are responsible for privacy functions conferred by the *Privacy Act 1988* and other laws.

We have freedom of information (FOI) functions, including the oversight of the operation of the *Freedom of Information Act 1982* (FOI Act) and review of decisions made by agencies and ministers under that Act.

We are accountable as a non-corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Our annual reporting responsibilities are under s 46 of the PGPA Act and s 30 of the AIC Act. We also have a range of reporting and other responsibilities under legislation generally applicable to Australian Government authorities.

### Portfolio structure and responsible minister

The OAIC is a statutory authority within the Attorney-General's portfolio. The minister responsible is Senator the Hon Michaelia Cash.

### Executive

During this reporting period, our Executive team met fortnightly and oversaw all aspects of our business covering corporate management and performance, finance, human resources, governance, risk management, external engagement and business planning.

### Risk management

Our Risk Management Framework and Guide helps staff to assess risks, make informed decisions and confidently engage with risk.

Our Executive team regularly considered and reviewed the risks the agency faced and reports on risk were received by the Audit Committee.

The OAIC continued our comprehensive review of our risk management approach in the 2020–21 financial year, including the development of a new Risk Management Policy. The risk management review made 11 recommendations and proposed 5 key activities to progress implementation.

Throughout 2020–21, significant progress has been made to implement these recommendations and the OAIC undertook activities to:

- build domain risk profiles to provide greater clarity and a stronger shared view on risk and uncertainty in the domains where the OAIC has a leading interest
- develop a Risk Appetite Statement that articulates the OAIC's risk appetite and tolerance for the different nature of risk
- develop an updated OAIC enterprise level risk profile and reporting arrangements
- review and refresh the risk management document suite and templates
- enhance the OAIC's risk management capability by providing training to all EL1 and EL2 staff.



## Fraud

During 2020–21, the OAIC's Fraud Policy and Guidelines and Fraud Control Plan were redrafted to reflect evolving policy requirements and contemporary practice. A fraud risk assessment was undertaken utilising the refreshed Risk Management Framework and Guide and risk register templates.

## Corporate services

The OAIC re-signed a Memorandum of Understanding (MOU) with the Australian Human Rights Commission (AHRC) in November 2019. The MOU sets out the provision of some corporate services including financial, information and communications technology and some human resources services. The OAIC also subleases a portion of our premises in Sydney from the AHRC under this arrangement.

For more information on the MOU with the AHRC see Appendix C.

## Audit Committee

Our Audit Committee assisted the Commissioner to discharge her responsibilities in relation to the OAIC's finances and performance, risk oversight and management, and system of internal control. The Audit Committee oversaw the work of our internal auditors, ensured the annual work program was adhered to and ensured appropriate coverage of our strategic and operational risks. The Audit Committee Charter is available at [oaic.gov.au/oaic-audit-committee](http://oaic.gov.au/oaic-audit-committee).

Arrangements were made to appoint a new independent Audit Committee chair and replace outgoing Audit Committee members with new members who are appropriately skilled independent people drawn from outside the Australian Public Service (APS).

Through the 2020–21 financial year, the Audit Committee comprised 3 independent members. For more information see Table 3.1 on page 72.

Representatives from the Australian National Audit Office attend meetings of the Audit Committee as observers.

## External scrutiny

During the reporting period, there were no judicial decisions or decisions of administrative tribunals that had a significant impact on our operations.

There were no reports on our operations by the Auditor-General, a parliamentary committee or the Commonwealth Ombudsman.

Table 3.1: Audit Committee

Member name	Qualifications, knowledge, skills or experience (include formal and informal as relevant)	Number of meetings attended	Total annual remuneration
Rachel Holt	Ms Holt holds the position of Senior Executive, Investigation and Conciliation Service at Australian Human Rights Commission. She has broad senior executive management experience within the public sector. Ms Holt resigned from the Committee in November 2020.	3	–
Anita Taylor	Ms Taylor holds the position of Chief Financial Officer, University of New England, and has experience as a chartered accountant in public practice and as a member on various boards. Ms Taylor is an experienced audit committee member including as Chair of the Board Audit and Risk Committee at the Civil Aviation Safety Authority. She has relevant experience within the aviation, sports administration, primary production and education sectors.	5	\$4,750
Josephine Schumann	Ms Schumann is a former senior public servant with experience as the Corporate Executive General Manager at the Australian Competition and Consumer Commission. She has extensive experience at the senior executive level in leadership roles within various Commonwealth agencies and currently chairs audit committees for several Commonwealth agencies. Ms Schumann has strong public sector and regulatory experience, with her skillset including risk and organisational performance.	5	\$5,250
Peter Woods	Mr Woods is a consultant in information and communication technology and corporate management. He has worked in a range of roles in government agencies including as Chief Information Officer at the Australian Competition and Consumer Commission. He has also held roles in the Australian Government Environment portfolio, including as Chief Information Officer and Head of the Corporate Services Division, Department of Agriculture, Water and the Environment. He has extensive experience in the executive management of major ICT business solutions and procurement projects, and he serves on multiple boards.	1	\$1,045

## People and Culture

In 2020–21, we provided opportunities to our people so that they could continuously build on their subject-matter expertise to meet the demands for privacy and information management for the Australian public, government agencies and the wider industry.

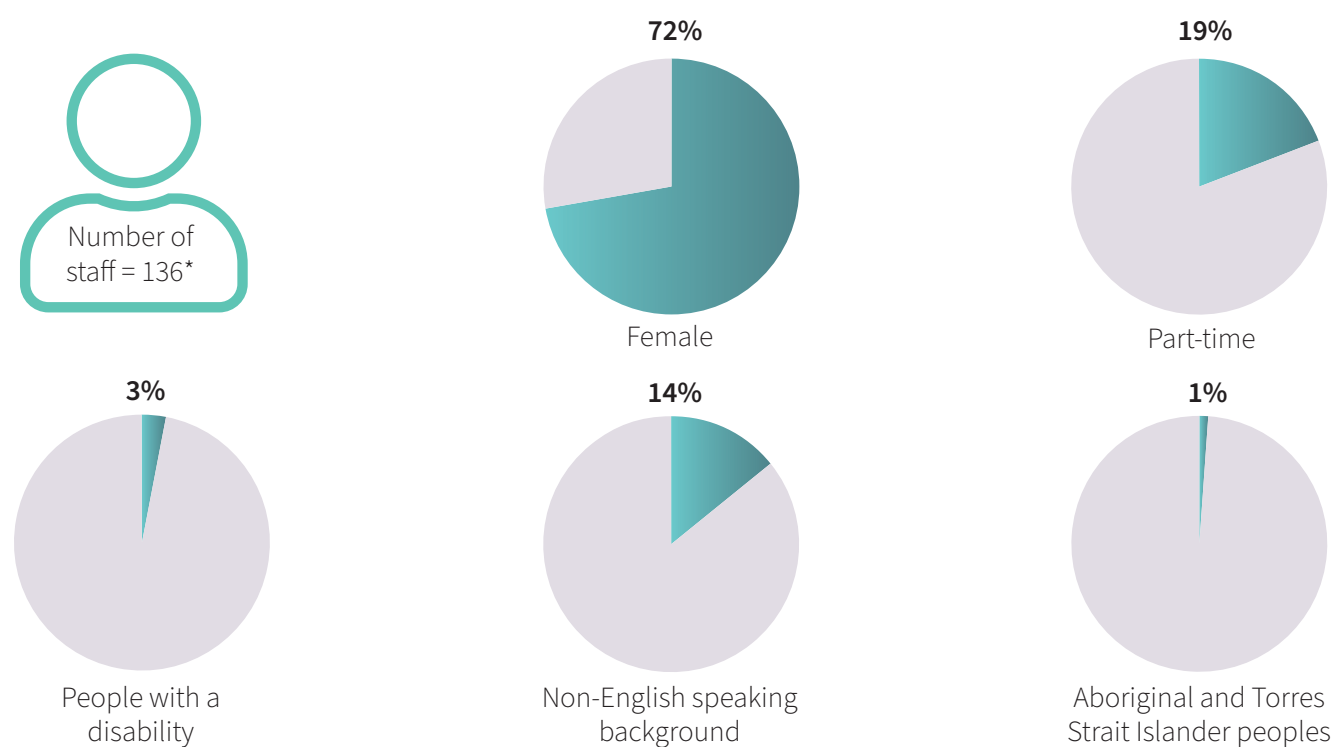
### Our people

Throughout 2020–21, the People and Culture function continued to support a more structured and strategic approach to building a workforce with the capabilities needed to deliver on our purpose.

During this reporting period, we had an average staffing level of 119.7. Our staff turnover was approximately 18% for ongoing staff. This involved 21 ongoing staff resigning, retiring or transferring to other Australian Government agencies. We conducted 21 recruitment processes and had 30 ongoing staff join us during 2020–21.

As of 30 June 2021, we had 122.4 full-time equivalent (FTE) staff, including ongoing and non-ongoing employees.

**Figure 3.1: OAIC workforce**



\* This reflects total head count and does not equate to FTE total which is 122.4.

Table 3.2: Staffing profile as at 30 June 2021

Classification	Male	Female	Full-time	Part-time	Ongoing	Non-ongoing	Total
Statutory Office Holder	–	1	1	–	–	1	1
SES Band 2	–	1	1	–	1	–	1
SES Band 1	2	1	3	–	1	2	3
Executive Level 2 (\$125,218–\$142,904)	4	18	14	8	20	2	22
Executive Level 1 (\$107,804–\$115,318)	16	25	35	6	34	7	41
APS 6 (\$85,541–\$94,197)	9	29	30	8	34	4	38
APS 5 (\$77,575–\$82,011)	6	20	24	2	22	4	26
APS 4 (\$69,583–\$73,935)	1	1	2	–	1	1	2
APS 2 (\$54,584–\$58,911)	–	2	–	2	–	2	2
<b>Total</b>	<b>38</b>	<b>98</b>	<b>110</b>	<b>26</b>	<b>113</b>	<b>23</b>	<b>136</b>

## Learning and development

The OAIC supports the skill and capability development of our employees to ensure we are ready to deal with complexity effectively and meet workflow demands. We align with the APS's 70:20:10 approach as a key development principle which supports learning in the workplace where it is most effective.

Internal capability remains a key focus for the OAIC in the areas of leadership and management, regulatory governance, cyber security and information management. The formalisation of our approach to capability and strategic workforce planning over the coming year will further support targeted development, job design, recruitment practices and performance management.

### Talking about performance

OAIC staff members participate in the performance management framework known as Talking about performance (TAP). The TAP framework is intended to strengthen and support the OAIC in performing our functions by providing regular and formal assessment of staff members' work performance and identify learning and development needs. Employees and their supervisors set out performance expectations at the start of the cycle, and engage in mid-cycle and end-of-cycle reviews throughout the year.

### Professional skills development

Throughout 2020–21, the OAIC faced challenges in implementing some planned learning and development initiatives. Face-to-face learning was not possible due to the COVID-19 pandemic, and many virtual learning opportunities were under development as training providers quickly recalibrated to the online learning environment. The People and Culture team worked in partnership with the Australian Public Service Commission and other partner agencies to provide opportunities for online training through specialised modules and courses covering leadership and management, finance essentials and other specialist, technical training. We also recognised that remaining positive and resilient during the pandemic was essential to productivity and wellbeing. The OAIC

engaged the Positivity Institute to deliver a suite of webinars to assist staff in developing strategies surrounding mental toughness, positive mindsets and sustainable routines.

Enhancing our regulatory craft and administrative law technical skills was another major feature of the 2020–21 learning calendar. A regulatory expert from the Harvard Kennedy School was engaged to deliver online workshops for OAIC staff including the Executive team. We also engaged an administrative law expert to deliver online training to almost 100 of our staff.

### Study and professional membership assistance

The OAIC has a highly engaged and expert workforce and encourages staff to undertake study to develop their knowledge and skills in relevant areas. Throughout 2020–21, we supported our staff in meeting their learning and development needs through our study assistance program. We are proud of all those who committed to undertaking self-directed study towards higher education doctorates, masters degrees or diploma level qualifications.

## Workplace relations

As a result of the previous year's freeze on general salary increases for 6 months, OAIC employees received their deferred general salary increase in November 2020 and again in May 2021. The OAIC's Public Service (Office of the Australian Information Commissioner Non-SES Employees) Determination 2019 is due to expire in May 2022. No staff received performance pay in 2020–21. There were 9 staff who had an individual flexibility arrangement in place.

## Statutory office holder and SES remuneration

The Remuneration Tribunal determined the terms and conditions of our statutory office holder. Remuneration for SES officers is governed by determinations made by the Commissioner under s 24(1) of the *Public Service Act 1999*.

During the reporting period, a Commonwealth-wide wage freeze for all SES employees was announced, which included freezing the application of general 2% wage increases as well as any remuneration increases through performance progression mechanisms within existing salary structures.

For more information on executive remuneration see Appendix B.

## Benefits

We offer our people the following non-salary related benefits:

- flexible working arrangements including home-based work where appropriate
- employee assistance program
- extended purchased leave
- maternity and adoption leave
- parental leave
- leave for compelling personal reasons and exceptional circumstances
- access to paid leave at half pay
- Flextime (APS staff) and time off in lieu (EL staff)
- study assistance
- support for professional and personal development
- healthy lifestyle reimbursement
- screen-based eyesight testing and screen-based prescription glasses reimbursements
- influenza vaccinations
- paid leave for COVID-19 vaccinations.

## OAIC Consultation Forum

The OAIC Consultation Forum (OCF) is a platform for consultation between the OAIC and its employees. The OCF meets twice a year and considers issues relating to the implementation of the Enterprise Agreement, policies and guidelines relating to working arrangements, and other matters that affect the working arrangements of OAIC staff.

## Workplace diversity

The OAIC is committed to creating a working environment that values and utilises the contribution of employees from diverse backgrounds and experiences. We celebrate the diversity of our staff as one of our greatest assets in meeting our organisational objectives. The OAIC's Diversity Committee is led by the Assistant Commissioner, Corporate and includes representatives from all OAIC branches.

During the reporting period, the OAIC marked International Day for the Elimination of Violence against Women, NAIDOC week, R U OK? Day, Harmony Day, International Women's Day, IDAHOBIT and Pride month.

## Work health and safety

During the reporting period, the OAIC formally established our own Health, Safety and Wellbeing Committee (HSWC) and held the first committee meeting in April 2021. Work health and safety (WHS) matters had previously been managed under a shared services agreement with the AHRC. The purpose of the HSWC is to bring together workers and management to assist in the development and review of health and safety policies and procedures for the workplace.

All new staff are provided with WHS information on commencement. There were no significant incidents reported by staff during this reporting period.

# Procurement

During this reporting period, we complied with the Australian Government's procurement policy framework. We encouraged competition, value for money, transparency and accountability.

All procurement was conducted in line with the Commonwealth Procurement Rules to ensure the efficient, effective, economical and ethical use of Australian Government resources.

During this reporting period, no contracts were exempt from reporting on AusTender on the basis that publishing contract details would disclose exempt matters under the FOI Act. All awarded contracts valued at \$100,000 (GST inclusive) or greater contained standard clauses granting the Auditor-General access to contractors' premises.

## Consultants

### Consultancy and non-consultancy contract expenditure reporting

During 2020–21, 9 new reportable consultancy contracts were entered into involving total actual expenditure of \$972,042. In addition, 3 ongoing reportable consultancy contracts were active during the reporting period, involving total actual expenditure of \$57,678.

During 2020–21, 16 new reportable non-consultancy contracts were entered into involving total actual expenditure of \$455,691. In addition, 2 ongoing reportable non-consultancy contracts were active during the reporting period, involving total actual expenditure of \$50,717.

This report contains information about actual expenditure on reportable consultancy contracts, and reportable non-consultancy contracts. Information on the value of such contracts is available on the AusTender website.

Decisions to engage consultants during 2020–21 were made in accordance with the PGPA Act and related regulations including the Commonwealth Procurement Rules and relevant internal policies.

The OAIC selects consultants through panel arrangements or by making limited and open approaches to market.

We engaged consultants where we lacked specialist expertise or when independent research, review or assessment was required. Typically, we engaged consultants to:

- investigate or diagnose a defined issue or problem
- carry out defined reviews or evaluations
- provide independent advice, information or creative solutions to assist with our decision making.

## Small business

We supported small business participation in the Commonwealth Government procurement market and engaged with small businesses wherever appropriate during our work. Small and medium enterprises and small enterprise participation statistics are available on the Department of Finance's website. We also recognised the importance of ensuring that small businesses were paid on time. Our statistics are available in the Survey of Australian Government Payments to Small Business, which is available on the Treasury's website.

Table 3.3: Expenditure on reportable consultancy contracts

Reportable consultancy contracts 2020–21	Number	Expenditure \$
New contracts entered into during the reporting period	9	972,042
Ongoing contracts entered into during a previous reporting period	3	57,678
<b>Total</b>	<b>12</b>	<b>1,029,720</b>
Organisations receiving a share of reportable consultancy contract expenditure 2020–21		Expenditure \$
PricewaterhouseCoopers		660,772
Crafted Solutions Pty Ltd		96,126
Monash University		51,700
Liquid Interactive		41,360
Ruth Mackay and Associates		38,599
<b>Total</b>		<b>888,557</b>

Table 3.4: Expenditure on reportable non-consultancy contracts

Reportable non-consultancy contracts 2020–21	Number	Expenditure \$
New contracts entered into during the reporting period	16	455,691
Ongoing contracts entered into during a previous reporting period	2	50,717
<b>Total</b>	<b>18</b>	<b>506,408</b>
Organisations receiving a share of reportable non-consultancy contract expenditure 2020–21		Expenditure \$
Cypha Interactive		212,475
Fiona McKenzie t/a Australian Law in Practice		58,860
Clayton Utz		47,091
archTIS Limited		44,412
Today Strategic Design Pty Ltd		43,552
<b>Total</b>		<b>406,390</b>



## Other requirements

### Advertising and market research

During the 2020–21 reporting period, the OAIC conducted the following advertising campaign:

Paid Facebook promotion of 2 new consumer privacy resources available on the OAIC website explaining how to protect personal information online.

Further information on the advertising campaign is available at [oaic.gov.au/advertising](https://oaic.gov.au/advertising).

During the 2020–21 reporting period, the OAIC conducted the following market research:

Completion of the report on the 2020 Australian Community Attitudes to Privacy Survey undertaken by Lonergan Research Pty Ltd in 2019–20, including publication of the report in September 2020. The total expenditure on market research in 2020–21 was \$51,785.09 (GST exclusive).

Further information on the survey is available at [oaic.gov.au/acaps2020](https://oaic.gov.au/acaps2020).

### Grant programs

No grant programs took place in 2020–21.

### Memorandums of understanding

We received funding for specific services under a range of memorandums of understanding. For more information see Appendix C.

### Ecologically sustainable development and environment performance

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires us

to report on how our activities accord with the principles of ecologically sustainable development. Our role and activities do not directly link with the principles of ecologically sustainable development or impact on the environment, other than through our business operations regarding the consumption of resources required to sustain our operations. We use energy saving methods in the OAIC's operation and endeavour to make the best use of resources.

### Disability reporting

As at 30 June 2021, 3% of the OAIC workforce identified as a person with a disability.

The OAIC is committed to reducing barriers for current and future employees with disability to participate in the workplace. The OAIC supports the National Disability Strategy 2010–2020, which is a national policy framework to improve the lives of people with a disability, promote participation and create a more inclusive society.

Disability reporting is included the Australian Public Service Commission's State of the Service reports and the APS Statistical Bulletin. These reports are available at [apsc.gov.au](https://apsc.gov.au).

### Information Publication Scheme

As required by the FOI Act, we have an Information Publication Scheme (IPS) entry on our website that provides information on our structure, functions, appointments, annual reports, consultation arrangements and FOI officer, information we routinely release following FOI requests and information we routinely provide to the Australian Parliament. This can be accessed at [oaic.gov.au/our-information-publication-scheme](https://oaic.gov.au/our-information-publication-scheme).



## Part 4

### Financial statements

Statement of comprehensive income .....	85
Statement of financial position.....	87
Statement of changes in equity .....	89
Cash flow statement.....	91
Overview .....	93
Financial performance.....	95
Financial position.....	100
Funding .....	109
People and relationships.....	111
Managing uncertainties .....	114
Other information .....	117



## INDEPENDENT AUDITOR'S REPORT

### To the Attorney-General

#### Opinion

In my opinion, the financial statements of the Office of the Australian Information Commissioner (the Entity) for the year ended 30 June 2021:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Entity as at 30 June 2021 and its financial performance and cash flows for the year then ended.

The financial statements of the Entity, which I have audited, comprise the following as at 30 June 2021 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement; and
- Notes to the financial statements, comprising a summary of significant accounting policies and other explanatory information.

#### Basis for opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Entity in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) to the extent that they are not in conflict with the *Auditor-General Act 1997*. I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

#### Accountable Authority's responsibility for the financial statements

As the Accountable Authority of the Entity, the Australian Information Commissioner is responsible under the *Public Governance, Performance and Accountability Act 2013* (the Act) for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under the Act. The Australian Information Commissioner is also responsible for such internal control as the Australian Information Commissioner determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Australian Information Commissioner is responsible for assessing the ability of the Entity to continue as a going concern, taking into account whether the Entity's operations will cease as a result of an administrative restructure or for any other reason. The Australian Information Commissioner is also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.

### Auditor's responsibilities for the audit of the financial statements

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Accountable Authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office

*S Bond*

Sally Bond

Executive Director

Delegate of the Auditor-General

Canberra

7 October 2021

**STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER**

In our opinion, the attached financial statements for the year ended 30 June 2021 comply with subsection 42(2) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Office of the Australian Information Commissioner will be able to pay its debts as and when they fall due.



Angelene Falk  
Australian Information Commissioner

6 October 2021



Brenton Attard  
Chief Financial Officer

6 October 2021

# Statement of comprehensive income

for the period ended 30 June 2021

	Notes	2021 \$'000	2020 \$'000	Original budget \$'000
<b>NET COST OF SERVICES</b>				
<b>Expenses</b>				
Employee benefits	1.1A	16,982	15,334	14,809
Suppliers	1.1B	6,799	5,763	6,927
Depreciation and amortisation	2.2A	2,650	2,234	1,827
Finance costs	1.1C	9	24	2
<b>Total expenses</b>		<b>26,439</b>	<b>23,355</b>	<b>23,565</b>
<b>Own-source income</b>				
<b>Own-source revenue</b>				
Revenue from contracts with customers	1.2A	2,323	2,257	2,323
Other revenue	1.2B	36	36	–
<b>Total own-source revenue</b>		<b>2,359</b>	<b>2,293</b>	<b>2,323</b>
<b>Gains</b>				
Other gains	1.2C	4	1	33
<b>Total gains</b>		<b>4</b>	<b>1</b>	<b>33</b>
<b>Total own-source income</b>		<b>2,363</b>	<b>2,294</b>	<b>2,356</b>
<b>Net (cost of)/contribution by services</b>		<b>(24,076)</b>	<b>(21,061)</b>	<b>(21,209)</b>
Revenue from government	1.2D	20,948	20,941	20,948
<b>Surplus/(Deficit) attributable to the Australian Government</b>		<b>(3,128)</b>	<b>(120)</b>	<b>(261)</b>

	Notes	2021 \$'000	2020 \$'000	Original budget \$'000
<b>OTHER COMPREHENSIVE INCOME</b>				
<b>Items not subject to subsequent reclassification to net cost of services</b>				
Changes in asset revaluation reserve		298	35	–
<b>Total other comprehensive income</b>		<b>298</b>	<b>35</b>	<b>–</b>

The above statement should be read in conjunction with the accompanying notes.

#### Budget variances commentary

The variances primarily relate to the suppliers, employee benefits, and depreciation and amortisation.

Supplier variances relate to essential COVID-19 regulatory work, preparation to transition corporate service providers and higher than anticipated legal expenditure.

During the reporting period the OAIC incurred higher than anticipated employee benefits costs. The increased costs relate to various recruitment activities to support workload requirements, including by way of short-term contractors.

The variance in depreciation and amortisation relates to two AASB 16 leases. One lease concluded and another commenced during the reporting period. Additionally, the OAIC acquired assets which incurred further depreciation.



# Statement of financial position

as at 30 June 2021

	Notes	2021 \$'000	2020 \$'000	Original budget \$'000
<b>ASSETS</b>				
<b>Financial assets</b>				
Cash and cash equivalents	2.1A	1,839	3,590	1,492
Trade and other receivables	2.1B	2,998	4,406	1,788
<b>Total financial assets</b>		<b>4,837</b>	7,996	3,280
<b>Non-financial assets<sup>1</sup></b>				
Property lease	2.2A	4,440	1,551	–
Infrastructure, plant and equipment	2.2A	1,545	1,573	2,980
Intangibles	2.2A	621	696	497
Other non-financial assets	2.2B	172	526	483
<b>Total non-financial assets</b>		<b>6,778</b>	4,346	3,960
<b>Total assets</b>		<b>11,615</b>	12,342	7,240
<b>LIABILITIES</b>				
<b>Payables</b>				
Suppliers	2.3A	1,351	2,656	680
Other payables	2.3B	926	822	1,151
<b>Total payables</b>		<b>2,277</b>	3,478	1,831
<b>Interest bearing liabilities</b>				
Leases	2.4A	4,456	1,615	–
<b>Total interest bearing liabilities</b>		<b>4,456</b>	1,615	–

	Notes	2021 \$'000	2020 \$'000	Original budget \$'000
<b>Provisions</b>				
Employee provisions	4.1A	<b>3,412</b>	2,949	2,303
<b>Total provisions</b>		<b>3,412</b>	2,949	2,303
<b>Total liabilities</b>		<b>10,145</b>	8,042	4,134
<b>Net assets</b>		<b>1,470</b>	4,300	3,106
<b>EQUITY</b>				
Contributed equity		<b>4,873</b>	4,873	4,173
Reserves		<b>506</b>	208	172
Accumulated results		<b>(3,909)</b>	(782)	(1,239)
<b>Total equity</b>		<b>1,470</b>	4,300	3,106

The above statement should be read in conjunction with the accompanying notes.

<sup>1</sup> Right-of-use assets are included in the property lease line item.

### Budget variances commentary

#### Assets

Total assets were higher than budgeted due to increases in the amount of cash held at 30 June and a new lease that was not known at the time of the budget. This cash position is mainly due to a timing difference.

#### Liabilities

Total liabilities were higher than budgeted due to a higher payables balance at 30 June than anticipated, and also due to the application of a new AASB 16 Lease. Payables are within normal terms and sufficient cash is available to pay them when they fall due in the next reporting period.

#### Equity

Equity is in line with expectations and the variance is due to the net effect of the variances in assets and liabilities above.

# Statement of changes in equity

for the period ended 30 June 2021

	Notes	2021 \$'000	2020 \$'000	Original budget \$'000
<b>CONTRIBUTED EQUITY</b>				
<b>Opening balance</b>				
Balance carried forward from previous period		4,873	2,873	4,173
<b>Contributions by owners</b>				
Equity injection – Appropriations		–	2,000	–
<b>Total transactions with owners</b>		–	2,000	–
<b>Closing balance as at 30 June</b>		<b>4,873</b>	<b>4,873</b>	<b>4,173</b>
<b>RETAINED EARNINGS</b>				
<b>Opening balance</b>				
Balance carried forward from previous period		(782)	(1,400)	(978)
Adjustment on initial application of AASB 16		–	739	–
<b>Adjusted opening balance</b>		<b>(782)</b>	<b>(661)</b>	<b>(978)</b>
<b>Comprehensive income</b>				
Surplus/(Deficit) for the period		(3,128)	(120)	(261)
<b>Closing balance as at 30 June</b>		<b>(3,910)</b>	<b>(782)</b>	<b>(1,239)</b>
<b>ASSET REVALUATION RESERVE</b>				
<b>Opening balance</b>				
Balance carried forward from previous period		208	173	172
<b>Comprehensive income</b>				
Other comprehensive income		298	35	–
<b>Closing balance as at 30 June</b>		<b>506</b>	<b>208</b>	<b>172</b>

	Notes	2021 \$'000	2020 \$'000	Original budget \$'000
<b>TOTAL EQUITY</b>				
<b>Opening balance</b>				
Balance carried forward from previous period		4,299	1,646	3,367
Adjustment for errors		–	–	–
Adjustment for changes in accounting policies		–	739	–
<b>Adjusted opening balance</b>		<b>4,299</b>	<b>2,385</b>	<b>3,367</b>
<b>Comprehensive income</b>				
Surplus/(Deficit) for the period		(3,128)	(120)	(261)
Other comprehensive income		298	35	–
<b>Total comprehensive income</b>		<b>(2,830)</b>	<b>(85)</b>	<b>(261)</b>
<b>Transactions with owners</b>				
<b>Contributions by owners</b>				
Equity injection – Appropriations		–	2,000	–
<b>Total transactions with owners</b>		<b>–</b>	<b>2,000</b>	<b>–</b>
<b>Closing balance as at 30 June</b>		<b>1,470</b>	<b>4,300</b>	<b>3,106</b>

The above statement should be read in conjunction with the accompanying notes.

### Accounting policy

#### *Equity injections*

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

### Budget variances commentary

Equity has decreased due to the operating result for the reporting period.

As a non-corporate Commonwealth entity and in accordance with net cash appropriation arrangements the OAIC budgets for a break-even operating result, adjusted for depreciation and amortisation expense. During the reporting period a combination of factors as outlined in the commentary on the Statement of Comprehensive Income resulted in an operating deficit.

# Cash flow statement

for the period ended 30 June 2021

	Notes	2021 \$'000	2020 \$'000	Original budget \$'000
<b>OPERATING ACTIVITIES</b>				
<b>Cash received</b>				
Appropriations		24,073	23,747	22,311
Sale of goods and rendering of services		1,949	2,111	2,323
GST received		849	1,000	250
<b>Total cash received</b>		<b>26,871</b>	<b>26,858</b>	<b>24,884</b>
<b>Cash used</b>				
Employees		(16,466)	(14,555)	(14,809)
Suppliers		(7,428)	(5,020)	(6,875)
Interest payments on lease liabilities		(9)	(24)	(2)
GST paid		–	–	(250)
Section 74 receipts transferred to OPA		(2,423)	(3,145)	–
<b>Total cash used</b>		<b>(26,326)</b>	<b>(22,744)</b>	<b>(21,936)</b>
<b>Net cash from/(used by) operating activities</b>		<b>545</b>	<b>4,114</b>	<b>2,948</b>
<b>INVESTING ACTIVITIES</b>				
<b>Cash used</b>				
Purchase of property, plant and equipment		(372)	(1,263)	(1,280)
Purchase of intangibles		(128)	(200)	–
<b>Total cash used</b>		<b>(500)</b>	<b>(1,463)</b>	<b>(1,280)</b>
<b>Net cash from/(used by) investing activities</b>		<b>(500)</b>	<b>(1,463)</b>	<b>(1,280)</b>

	Notes	2021 \$'000	2020 \$'000	Original budget \$'000
<b>FINANCING ACTIVITIES</b>				
<b>Cash received</b>				
Contributed equity		–	1,950	–
<b>Total cash received</b>		–	1,950	–
<b>Cash used</b>				
Principal payments of lease liabilities		(1,796)	(1,612)	(1,566)
<b>Total cash used</b>		(1,796)	(1,612)	(1,566)
<b>Net cash from/(used by) financing activities</b>		(1,796)	338	(1,566)
<b>Net increase/(decrease) in cash held</b>		(1,751)	2,989	102
Cash and cash equivalents at the beginning of the reporting period		3,590	601	1,390
<b>Cash and cash equivalents at the end of the reporting period</b>	2.1A	<b>1,839</b>	3,590	1,492

The above statement should be read in conjunction with the accompanying notes.

#### Budget variances commentary

The major variances in the cash flow statement includes cash received and used for operating activities and cash used for investing activities.

During the reporting period the OAIC ensured delivery of its program outcomes which impacted cash utilisation on operating and investing activities. There was a decrease in cash used for purchases of property, plant and equipment due to a deferral of those activities compared to budget.

## Overview

### Objectives of the Office of the Australian Information Commissioner

The Office of the Australian Information Commissioner (OAIC) is an Australian Government controlled entity established under the *Australian Information Commissioner Act 2010*.

The OAIC budgeted for a break-even result, adjusted for depreciation and amortisation of \$901,000. During the reporting period there were a number of factors which were not anticipated that impacted on the result.

Significant factors included COVID-19 pandemic related regulatory work, OAIC's preparations to change corporate service providers and higher than anticipated legal expenditure.

A further impact included 2 leases and the associated impact of AASB 16 lease on depreciation and amortisation expense. One lease concluded and another commenced during the reporting period.

The OAIC is structured to meet the following outcome:

Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of Information Commissioner, freedom of information and privacy functions.

The OAIC activities contributing toward this outcome are classified as departmental. Departmental activities involve the use of assets, liabilities, income and expenses controlled or incurred by the OAIC in its own right.

### The basis of preparation

The financial statements are general purpose financial statements and are required by s 42 of the *Public Governance, Performance and Accountability Act 2013*.

The financial statements have been prepared in accordance with:

- a) Public Governance, Performance and Accountability (Financial Reporting) Rule 2015 (FRR)
- b) Australian Accounting Standards and Interpretations – Reduced Disclosure Requirements issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars.

### Going concern basis of accounting

The financial statements have been prepared on a going concern basis which assumes that the OAIC will have adequate cash to fund its operations for at least 12 months from the date of signing these financial statements.

The OAIC made an operating loss of \$3.128 million for the year ended 30 June 2021 (2019–20: loss of \$0.12 million). As at 30 June 2021, the OAIC has accumulated losses of \$3.909 million (2019–20: \$0.782 million), net assets of \$1.47 million (2019–20: \$4.3 million) and net current assets of \$1.228 million (2019–20: \$2.723 million). The balance of cash and

equivalents as at 30 June 2021 was \$1.839 million (2019–20: \$3.59 million).

The OAIC has prepared cashflow forecasts which indicate that the OAIC will have adequate cash to fund its operations for at least 12 months from the date of signing these financial statements.

The OAIC has implemented measures to mitigate the likelihood of unforeseen or inflated expenditure for at least 12 months from signing. This includes allocation of contingency funds within the internal budget, managed staff numbers, review of leases and enhanced budget reporting controls. The OAIC is also in discussions with government for additional appropriation funding.

Based on the above, the Accountable Authority and Chief Financial Officer are of the view that the OAIC

will be able to continue as a going concern and will therefore realise its assets and settle its liabilities in the normal course of business at the amounts stated in the financial statements.

## New accounting standards

### *Adoption of new Australian accounting standard requirements*

No accounting standard has been adopted earlier than the application date as stated in the standard.

The following new standards were issued prior to the signing of the statement by the accountable authority and chief financial officer, were applicable to the current reporting period and had no material effect on OAIC financial statements:

Standard/ Interpretation	Nature of change in accounting policy, transitional provisions, <sup>1</sup> and adjustment to financial statements
AASB 1059 Service Concession Arrangements: Grantors	<p>AASB 1059 became effective from 1 July 2020.</p> <p>The new standard addresses the accounting for a service concession arrangement by a grantor that is a public sector entity by prescribing the accounting for the arrangement from a grantor's perspective.</p> <p>Prior to the issuance of AASB 1059, there was no definitive accounting guidance in Australia for service concession arrangements, which include a number of public private partnerships (PPP) arrangements. The AASB issued the new standard to address the lack of specific accounting guidance and based the content thereof broadly on its international equivalent: International Public Sector Accounting Standard 32: Service Concession Arrangements: Grantor.</p>

<sup>1</sup> The details of the changes in accounting policies, transitional provisions and adjustments are disclosed below and in the relevant notes to the financial statements.

### *AASB 1059 Service Concession Arrangements: Grantors*

AASB 1059 Service Concession Arrangements: Grantors had no impact on the OAIC.

## Events after the reporting period

There are no known events after the reporting period that could have a material impact on the financial statements.

## Taxation

The entity is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).



# Financial performance

This section analyses the financial performance of the OAIC for the year ended 2021.

## 1.1 Expenses

	2021 \$'000	2020 \$'000
<b>1.1A: Employee benefits</b>		
Wages and salaries	13,208	11,958
Superannuation		
Defined contribution plans	1,645	1,292
Defined benefit plans	445	436
Leave and other entitlements	1,558	1,293
Separation and redundancies	–	306
Other employee expenses	126	49
<b>Total employee benefits</b>	<b>16,982</b>	<b>15,334</b>

### Accounting policy

Accounting policies for employee related expenses are contained in the People and relationships section.

	2021 \$'000	2020 \$'000
<b>1.1B: Suppliers</b>		
<b>Goods and services supplied or rendered</b>		
Insurance	–	22
Office consumables	51	64
Official travel	69	203
Printing and publications	4	51
Property outgoing	561	415
Professional services and fees	5,156	3,425
Reference materials, subscriptions and licenses	236	252
Staff training	213	190
Telecommunications	49	56
Other	230	269
<b>Total goods and services supplied or rendered</b>	<b>6,570</b>	<b>4,948</b>
Goods supplied	55	367
Services rendered	6,515	4,581
<b>Total goods and services supplied or rendered</b>	<b>6,570</b>	<b>4,948</b>
<b>Other suppliers</b>		
Workers compensation expenses	59	35
Short-term leases	15	667
Low value leases	155	113
<b>Total other suppliers</b>	<b>229</b>	<b>815</b>
<b>Total suppliers</b>	<b>6,799</b>	<b>5,763</b>

The OAIC has short-term lease commitments of \$1.210 million as at 30 June 2021 for 2 leases: Level 2, 175 Pitt St, Sydney NSW 2000 for the period of 1 July 2021 to 30 June 2022 and Ground Floor, 4 National Circuit, Barton ACT 2600 which is on a monthly basis.

### Accounting policy

#### *Short-term leases and leases of low-value assets*

The OAIC has elected not to recognise right-of-use assets and lease liabilities for short-term leases of assets that have a lease term of 12 months or less and leases of low-value assets (less than \$10,000). The entity recognises payments associated with these leases as an expense on a straight-line basis over the lease term.

	2021 \$'000	2020 \$'000
<b>1.1C: Finance costs</b>		
Interest on property lease liabilities	9	24
<b>Total finance costs</b>	<b>9</b>	<b>24</b>

The above lease disclosures should be read in conjunction with the accompanying notes 1.1B, 1.1H, 1.2E, 1.2I, 3.2 and 3.4B.

### Accounting policy

All borrowing costs are expensed as incurred.

## 1.2 Own-source revenue and gains

	2021 \$'000	2020 \$'000
<b>Own-source revenue</b>		
<b>1.2A: Revenue from contracts with customers</b>		
Rendering of services	2,323	2,257
<b>Total revenue from contracts with customers</b>	<b>2,323</b>	<b>2,257</b>
<b>Disaggregation of revenue from contracts with customers</b>		
Major product/service line:		
Regulatory services	2,323	2,257
	<b>2,323</b>	<b>2,257</b>
Type of customer:		
Australian Government entities (related parties)	2,139	2,079
State and territory governments	184	178
	<b>2,323</b>	<b>2,257</b>
Timing of transfer of goods and services:		
Over time	2,323	2,257
	<b>2,323</b>	<b>2,257</b>

**Accounting policy**

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction. Receivables for goods and services, which have 30-day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

	2021 \$'000	2020 \$'000
<b>1.2B: Other revenue</b>		
Resources received free of charge		
Remuneration of auditors	36	36
<b>Total other revenue</b>	<b>36</b>	<b>36</b>

**Accounting policy***Resources received free of charge*

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

	2021 \$'000	2020 \$'000
<b>Gains</b>		
<b>1.2C: Other gains</b>		
Sale of assets	4	1
<b>Total other gains</b>	<b>4</b>	<b>1</b>

#### Accounting policy

##### *Sale of assets*

Gains from disposal of assets are recognised when control of the asset has passed to the buyer.

	2021 \$'000	2020 \$'000
<b>1.2D: Revenue from government</b>		
Appropriations		
Departmental appropriations	20,948	20,941
<b>Total revenue from government</b>	<b>20,948</b>	<b>20,941</b>

#### Accounting policy

##### *Revenue from government*

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue from government when the entity gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

## Financial position

This section analyses the OAIC assets used to conduct its operations and the operating liabilities incurred as a result.

Employee related information is disclosed in the People and relationships section.

### 2.1 Financial assets

	2021 \$'000	2020 \$'000
<b>2.1A: Cash and cash equivalents</b>		
Cash on hand and at bank	1,839	3,590
<b>Total cash and cash equivalents</b>	<b>1,839</b>	<b>3,590</b>

#### Accounting policy

Cash is recognised at its nominal amount. Cash and cash equivalents includes cash on hand.

	2021 \$'000	2020 \$'000
<b>2.1B: Trade and other receivables</b>		
<b>Goods and services receivables</b>		
Goods and services	62	163
<b>Total goods and services receivables</b>	<b>62</b>	<b>163</b>
<b>Appropriation receivables</b>		
Appropriation receivable	2,795	4,126
<b>Total appropriation receivables</b>	<b>2,795</b>	<b>4,126</b>
<b>Other receivables</b>		
GST receivable from the Australian Taxation Office	141	117
<b>Total other receivables</b>	<b>141</b>	<b>117</b>
<b>Total trade and other receivables (gross)</b>	<b>2,998</b>	<b>4,406</b>
<b>Less impairment loss allowance</b>	<b>–</b>	<b>–</b>
<b>Total trade and other receivables (net)</b>	<b>2,998</b>	<b>4,406</b>
<b>Trade and other receivables (net) expected to be recovered</b>		
More than 12 months	2,998	4,406
<b>Total trade and other receivables (net)</b>	<b>2,998</b>	<b>4,406</b>

### Accounting policy

#### *Receivables*

Receivables are measured at amortised cost using the effective interest method less impairment.

## 2.2 Non-financial assets

### 2.2A: Reconciliation of the opening and closing balances of property lease, infrastructure, plant and equipment and intangibles

#### Reconciliation of the opening and closing balances of property lease, infrastructure, plant and equipment and intangibles for 2021

	Property lease \$'000	Lease improvements \$'000	Lease improvements work in progress \$'000	Computer, plant and equipment \$'000	Computer, plant and equipment work in progress \$'000	Intangibles work in progress \$'000	Total \$'000
<b>As at 1 July 2020</b>							
Gross book value	3,227	1,498	42	33	-	158	7,988
Accumulated depreciation, amortisation and impairment	(1,676)	-	-	-	-	-	(4,168)
<b>Total as at 1 July 2020</b>	<b>1,551</b>	<b>1,498</b>	<b>42</b>	<b>33</b>	<b>-</b>	<b>158</b>	<b>3,820</b>
<b>Adjusted total as at 1 July 2020</b>	<b>1,551</b>	<b>1,498</b>	<b>42</b>	<b>33</b>	<b>-</b>	<b>158</b>	<b>3,820</b>
Additions							
Purchase	-	-	341	-	31	128	500
Work in progress transfer	-	383	(383)	-	-	(230)	-
Right-of-use assets	4,672	-	-	-	-	-	4,672
Revaluations and impairments recognised in other comprehensive income	-	285	-	13	-	-	298
Depreciation and amortisation	-	(676)	-	(22)	-	-	(901)
Depreciation on right-of-use assets	(1,748)	-	-	-	-	-	(1,748)



	Property lease \$'000	Lease improvements \$'000	Lease improvements work in progress \$'000	Computer, plant and equipment \$'000	Computer, plant and equipment work in progress \$'000	Intangibles \$'000	Intangibles work in progress \$'000	Total \$'000
Other movements of right-of-use assets	(35)	-	-	-	-	-	-	(35)
<b>Total as at 30 June 2021</b>	<b>4,440</b>	<b>1,490</b>	<b>-</b>	<b>24</b>	<b>31</b>	<b>565</b>	<b>56</b>	<b>6,605</b>
<b>Total as at 30 June 2021 represented by</b>								
Gross book value	7,864	1,490	-	24	31	3,260	56	12,725
Accumulated depreciation, amortisation and impairment	(3,424)	-	-	-	-	(2,695)	-	(6,119)
<b>Total as at 30 June 2021</b>	<b>4,440</b>	<b>1,490</b>	<b>-</b>	<b>24</b>	<b>31</b>	<b>565</b>	<b>56</b>	<b>6,605</b>
Carrying amount of right-of-use assets	4,440	-	-	-	-	-	-	4,440

No indicators of impairment were found for infrastructure, plant and equipment and intangibles.

No infrastructure, plant and equipment and intangibles are expected to be sold or disposed of within the next 12 months.

#### Revaluations of non-financial assets

All revaluations were conducted in accordance with the revaluation policy stated at Note 2.2. On 30 June 2021, an independent valuer conducted the revaluations.

# Reconciliation of the opening and closing balances of infrastructure, plant and equipment and intangibles for 2020

	Property lease \$'000	Lease improvements \$'000	Lease improvements work in progress \$'000	Computer, plant and equipment \$'000	Intangibles \$'000	Intangibles work in progress \$'000	Total
<b>As at 1 July 2019</b>							
Gross book value	-	953	-	23	2,987	-	3,963
Accumulated depreciation, amortisation and impairment	-	(318)	-	(15)	(2,303)	-	(2,636)
<b>Total as at 1 July 2019</b>	-	635	-	8	684	-	1,327
Recognition of right-of-use asset on initial application of AASB 16	3,227	-	-	-	-	-	3,227
<b>Adjusted total as at 1 July 2019</b>	<b>3,227</b>	<b>635</b>	<b>-</b>	<b>8</b>	<b>684</b>	<b>-</b>	<b>4,554</b>
Additions		1,189	42	33	43	158	1,465
Revaluations and impairments recognised in other comprehensive income	-	31	-	4	-	-	35
Depreciation and amortisation		(357)	-	(12)	(189)	-	(558)
Depreciation on right-of-use assets	(1,676)	-	-	-	-	-	(1,676)
<b>Total as at 30 June 2020</b>	<b>1,551</b>	<b>1,498</b>	<b>42</b>	<b>33</b>	<b>538</b>	<b>158</b>	<b>3,820</b>
<b>Total as at 30 June 2020 represented by</b>							
Gross book value	3,227	1,498	42	33	3,030	158	7,988
Accumulated depreciation, amortisation and impairment	(1,676)	-	-	-	(2,492)	-	(4,168)
<b>Total as at 30 June 2020 represented by</b>	<b>1,551</b>	<b>1,498</b>	<b>42</b>	<b>33</b>	<b>538</b>	<b>158</b>	<b>3,820</b>
Carrying amount of right-of-use assets	1,551	-	-	-	-	-	1,551

### Accounting policy

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor's accounts immediately prior to the restructuring.

#### *Asset recognition threshold*

Purchases of property, plant and equipment are recognised initially at cost in the statement of financial position, except for purchases costing less than \$5,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions in property leases taken up by the entity where there exists an obligation to restore the property to its original condition. These costs are included in the value of the OAIC's leasehold improvements with a corresponding provision for the 'make good' recognised.

#### *Lease Right-of-Use (ROU) assets*

Leased ROU assets are capitalised at the commencement date of the lease and comprise of the initial lease liability amount, initial direct costs incurred when entering into the lease less any lease incentives received. These assets are accounted for by Commonwealth lessees as separate asset classes to corresponding assets owned outright, but included in the same column as where the corresponding underlying assets would be presented if they were owned.

On initial adoption of AASB 16 the OAIC has adjusted the ROU assets at the date of initial application by the amount of any provision for onerous leases recognised immediately before the date of initial application. Following initial application, an impairment review is undertaken for any right-of-use lease asset that shows indicators of impairment and an impairment loss is recognised against any right-of-use lease asset that is impaired. Lease ROU assets continue to be measured at cost after initial recognition in Commonwealth agency, GGS and Whole of Government financial statements.

#### *Revaluations*

Following initial recognition at cost, property, plant and equipment (**excluding ROU assets**) are carried at fair value (or an amount not materially different from fair value) less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit.

Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

*Depreciation*

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the entity using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2021	2020
Leasehold improvements	lease term	lease term
Computer, plant and equipment	4 to 10 years	4 to 10 years

The depreciation rates for ROU assets are based on the commencement date to the earlier of the end of the useful life of the ROU asset or the end of the lease term.

*Impairment*

All assets were assessed for impairment at 30 June 2021. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the entity were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

*Derecognition*

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

*Intangibles*

The entity's intangibles comprise internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the OAIC's software are 2 to 5 years (2020: 2 to 5 years).

All software assets were assessed for indications of impairment as at 30 June 2021.

**Accounting judgements and estimates**

The fair value of infrastructure, plant and equipment has been taken to be the market value of similar assets as determined by an independent valuer.

	2021 \$'000	2020 \$'000
<b>2.2B: Other non-financial assets</b>		
Prepayments	172	526
<b>Total other non-financial assets</b>	<b>172</b>	<b>526</b>
<b>Other non-financial assets expected to be recovered</b>		
No more than 12 months	172	526
<b>Total other non-financial assets</b>	<b>172</b>	<b>526</b>

No indicators of impairment were found for other non-financial assets.

## 2.3 Payables

	2021 \$'000	2020 \$'000
<b>2.3A: Suppliers</b>		
Trade creditors and accruals	1,351	2,656
<b>Total suppliers</b>	<b>1,351</b>	<b>2,656</b>
<b>Suppliers expected to be settled</b>		
No more than 12 months	1,351	2,656
<b>Total suppliers</b>	<b>1,351</b>	<b>2,656</b>
<b>2.3B: Other payables</b>		
Salaries and wages	254	170
Superannuation	45	30
Other employee expenses	3	6
GST payable to the Australian Taxation Office	7	–
Revenue received in advance	616	616
<b>Total other payables</b>	<b>926</b>	<b>822</b>
<b>Other payables to be settled</b>		
More than 12 months	926	822
<b>Total other payables</b>	<b>926</b>	<b>822</b>

## 2.4 Interest bearing liabilities

	2021 \$'000	2020 \$'000
<b>2.4A: Leases</b>		
Lease liabilities	4,456	1,615
<b>Total leases</b>	<b>4,456</b>	<b>1,615</b>

Total cash outflow for leases for the year ended 30 June 2021 was \$1.805m (2020: \$1.636m).

Maturity analysis - contractual undiscounted cash flows		
Within 1 year	882	1,586
Between 1 to 5 years	3,632	–
More than 5 years	–	–
<b>Total leases</b>	<b>4,514</b>	<b>1,586</b>

### Accounting policy

#### Leases

For all new contracts entered into, the Office of the Australian Information Commissioner considers whether the contract is, or contains a lease. A lease is defined as 'a contract, or part of a contract, that conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration'.

Once it has been determined that a contract is, or contains a lease, the lease liability is initially measured at the present value of the lease payments unpaid at the commencement date, discounted using the interest rate implicit in the lease, if that rate is readily determinable, or the department's incremental borrowing rate.

Subsequent to initial measurement, the liability will be reduced for payments made and increased for interest. It is remeasured to reflect any reassessment or modification to the lease. When the lease liability is remeasured, the corresponding adjustment is reflected in the right-of-use asset or profit and loss depending on the nature of the reassessment or modification.

## Funding

This section identifies the OAIC funding structure.

### 3.1 Appropriations

#### 3.1A: Annual appropriations ('recoverable GST exclusive')

##### Annual appropriations for 2021

	Annual appropriation \$'000	Adjustments to appropriation <sup>1</sup> \$'000	Total appropriation \$'000	Appropriation applied in 2021 (current and prior years) \$'000	Variance <sup>2</sup> \$'000
<b>Departmental</b>					
Ordinary annual services	20,948	2,423	23,371	(23,565)	(194)
<b>Total departmental</b>	<b>20,948</b>	<b>2,423</b>	<b>23,371</b>	<b>(23,565)</b>	<b>(194)</b>

<sup>1</sup> Adjustments including for PGPA Act, s 74 receipts.

<sup>2</sup> Variance represents the application of current and previous years appropriation and own-source revenue.

##### Annual appropriations for 2020

	Annual appropriation <sup>1</sup> \$'000	Adjustments to appropriation <sup>2</sup> \$'000	Total appropriation \$'000	Appropriation applied in 2020 \$'000	Variance \$'000
Departmental					
Ordinary annual services	21,270	3,589	24,859	(20,037)	4,822
Other services					
Equity injections	2,000	–	2,000	(1,250)	750
<b>Total departmental</b>	<b>23,270</b>	<b>3,589</b>	<b>26,859</b>	<b>(21,287)</b>	<b>5,572</b>

<sup>1</sup> Adjustments including for PGPA Act s 74 receipts.

<sup>2</sup> Variance represents the application of current and previous years appropriation and own-source revenue.

### 3.1B: Unspent annual appropriations ('recoverable GST exclusive')

	2021 \$'000	2020 \$'000
<b>Departmental</b>		
Appropriation Act (No. 1) 2020–2021	3,415	–
Supply Act (No. 1) 2020–2021	1,097	–
Appropriation Act (No. 1) 2019–2020	–	5,074
Supply Act (No. 1) 2019–2020	–	601
Appropriation Act (No. 2) 2019–2020	122	750
<b>Total departmental</b>	<b>4,634</b>	<b>6,425</b>

## 3.2 Net cash appropriation arrangements

	2021 \$'000	2020 \$'000
<b>Total comprehensive income/(loss) – as per the statement of comprehensive income</b>	<b>(2,830)</b>	<b>472</b>
<b>Plus:</b> depreciation/amortisation of assets funded through appropriations (departmental capital budget funding and/or equity injections)	<b>901</b>	<b>(558)</b>
<b>Plus:</b> depreciation of right-of-use assets	<b>1,748</b>	<b>(1,676)</b>
<b>Less:</b> lease principal repayments	<b>(1,796)</b>	<b>1,612</b>
<b>Net cash operating surplus/(Deficit)</b>	<b>(1,977)</b>	<b>(150)</b>



## People and relationships

This section describes a range of employment and post-employment benefits provided to our people and our relationships with other key people.

### 4.1 Employee provisions

	2021 \$'000	2020 \$'000
<b>4.1A: Employee provisions</b>		
Leave	3,412	2,949
<b>Total employee provisions</b>	<b>3,412</b>	<b>2,949</b>
<b>Employee provisions expected to be settled</b>		
No more than 12 months	1,505	2,257
More than 12 months	1,907	692
<b>Total employee provisions</b>	<b>3,412</b>	<b>2,949</b>

#### Accounting policy

Liabilities for short-term employee benefits and termination benefits expected within 12 months of the end of reporting period are measured at their nominal amounts.

##### *Leave*

The liability for employee benefits includes provision for annual leave and long service leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the OAIC's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the work of an actuary performed for the Department of Finance (DoF) and summarised in the Standard Parameters for use in 2020–21 Financial Statements published on the DoF website. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

##### *Separation and redundancy*

Provision is made for separation and redundancy benefit payments. The entity recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

### Superannuation

The OAIC's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), or the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian Government.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in DoF's schedules and notes.

The OAIC makes employer contributions to the employees' defined benefit superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The OAIC accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the financial year.

### Accounting judgements and estimates

The long service leave has been estimated in accordance with the FRR taking into account expected salary growth, attrition and future discounting using the government bond rate.

## 4.2 Key management personnel remuneration

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the OAIC. The OAIC has determined the key management personnel to be the Information Commissioner and Deputy Commissioner.

	2021 \$'000	2020 \$'000
Short-term employee benefits	717	724
Post-employment benefits	86	84
Other long-term employee benefits	17	22
Termination benefits	–	–
<b>Total key management personnel remuneration expenses<sup>1</sup></b>	<b>820</b>	<b>830</b>

The total number of key management personnel that are included in the above table is 2 (2020: 2).

<sup>1</sup> The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the entity.

### 4.3 Related party disclosures

#### Related party relationships

The OAIC is an Australian Government controlled entity. Related parties to this entity are key management personnel including the Portfolio Minister and Executive, and other Australian Government entities.

#### Transactions with related parties

Given the breadth of government activities, related parties may transact with the government sector in the same capacity as ordinary citizens. Such transactions include the payment or refund of taxes, receipt of a Medicare rebate or higher education loans. These transactions have not been separately disclosed in this note.

Significant transactions with related parties can include:

- the payments of grants or loans
- purchases of goods and services
- asset purchases, sales transfers or leases
- debts forgiven
- guarantees.

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the entity, it has been determined that there are no related party transactions to be separately disclosed.

## Managing uncertainties

This section analyses how the OAIC manages financial risks within our operating environment.

### 5.1 Contingent assets and liabilities

#### Quantifiable contingencies

At the time signing these financial statements, the OAIC had no quantifiable contingent liabilities.

#### Unquantifiable contingencies

As at 30 June 2021 the Australian Information Commissioner (the Commissioner) is a respondent to 5 proceedings in the Federal Court of Australia (FCA) and a respondent to 1 matter in the Federal Circuit Court (FCC).

Five (5) of the proceedings before the federal courts in which the Commissioner is a respondent party

concern reviews under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR) of Commissioner decisions made under the *Privacy Act 1988*. In the sixth proceeding the Commissioner is a respondent party to an application for leave to appeal against the FCA's interlocutory decision in civil penalty proceedings commenced by the Commissioner.

Although the federal courts may award costs, the Commissioner's exposure to a costs order is highly unlikely in those matters where she appears as a respondent party, based on current legal advice. It is not possible to estimate the amounts of payment(s) that may be required in relation to the matters where a costs order may materialise at the conclusion of the proceeding.

The Commissioner is also a respondent to 2 proceedings in the Administrative Appeals Tribunal (AAT). However, as the AAT is a 'no costs' jurisdiction consideration of contingent liabilities is not necessary in these matters.

#### Accounting policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

## 5.2 Financial instruments

	2021 \$'000	2020 \$'000
<b>5.2A: Categories of financial instruments</b>		
<b>Financial assets at amortised cost</b>		
Cash on hand and at bank	1,839	3,590
Trade and other receivables	62	163
<b>Total financial assets at amortised cost</b>	<b>1,901</b>	3,753
<b>Total financial assets</b>	<b>1,901</b>	3,753
<b>Financial liabilities</b>		
<b>Financial liabilities measured at amortised cost</b>		
Trade creditors and accruals	1,351	2,656
<b>Total financial liabilities measured at amortised cost</b>	<b>1,351</b>	2,656
<b>Total financial liabilities</b>	<b>1,351</b>	2,656

### Accounting policy

#### **Financial assets**

In accordance with AASB 9 *Financial Instruments*, the entity classifies its financial assets in the following categories:

- a) financial assets at fair value through profit or loss;
- b) financial assets at fair value through other comprehensive income; and
- c) financial assets measured at amortised cost.

The classification depends on both the entity's business model for managing the financial assets and contractual cash flow characteristics at the time of initial recognition. Financial assets are recognised when the entity becomes a party to the contract and, as a consequence, has a legal right to receive or a legal obligation to pay cash and derecognised when the contractual rights to the cash flows from the financial asset expire or are transferred upon trade date. Comparatives have not been restated on initial application.

#### *Financial assets at amortised cost*

Financial assets included in this category need to meet two criteria:

- 1. the financial asset is held in order to collect the contractual cash flows; and
- 2. the cash flows are solely payments of principal and interest (SPPI) on the principal outstanding amount.

Amortised cost is determined using the effective interest method.

#### *Effective interest method*

Income is recognised on an effective interest rate basis for financial assets that are recognised at amortised cost.

*Impairment of financial assets*

Financial assets are assessed for impairment at the end of each reporting period based on expected credit losses, using the general approach which measures the loss allowance based on an amount equal to *lifetime expected credit losses* where risk has significantly increased, or an amount equal to *12-month expected credit losses* if risk has not increased.

The simplified approach for trade, contract and lease receivables is used. This approach always measures the loss allowance as the amount equal to the lifetime expected credit losses.

A write-off constitutes a derecognition event where the write-off directly reduces the gross carrying amount of the financial asset.

**Financial liabilities**

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities. Financial liabilities are recognised and derecognised upon 'trade date'.

*Financial liabilities at amortised cost*

Financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs. These liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective interest basis.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

**5.3 Fair value measurement**

The following tables provide an analysis of assets and liabilities that are measured at fair value. The remaining assets and liabilities disclosed in the statement of financial position do not apply the fair value hierarchy.

The different levels of the fair value hierarchy are defined below.

Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities that the entity can access at measurement date.

Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3: Unobservable inputs for the asset or liability.

**Accounting policy**

The OAIC considers the fair value hierarchy levels at the end of the reporting period. There were no transfers in or out of any levels during the reporting period.

**5.3A: Fair value measurement**

Fair value measurements at the end of the reporting period				
	2021 \$'000	2020 \$'000	Category (Level 1, 2 or 3)	Valuation technique(s) and inputs used
<b>Non-financial assets<sup>1</sup></b>				
Infrastructure, plant and equipment	1,545	1,573	2	Market approach. Market replacement cost less estimate of written down value of asset used.

<sup>1</sup> There were no non-financial assets where the highest and best use differed from its current use during the reporting period.

## Other information

### 6.1 Current/non-current distinction for assets and liabilities

#### 6.1A: Current/non-current distinction for assets and liabilities

	2021 \$'000	2020 \$'000
<b>Assets expected to be recovered in:</b>		
<b>No more than 12 months</b>		
Cash and cash equivalents	1,839	3,590
Good and services	62	163
Appropriation receivables	2,795	4,126
GST Receivables	141	117
Prepayments	172	526
Property Lease	–	1,551
<b>Total no more than 12 months</b>	<b>5,009</b>	<b>10,073</b>
<b>More than 12 months</b>		
Property Lease	4,440	–
Infrastructure, Plant and Equipment	1,545	1,573
Intangibles	621	696
<b>Total more than 12 months</b>	<b>6,605</b>	<b>2,269</b>
<b>Total assets</b>	<b>11,615</b>	<b>12,342</b>
<b>Liabilities expected to be settled in:</b>		
<b>No more than 12 months</b>		
Suppliers	1,351	2,656
Salaries and wages	254	170
Superannuation	45	30
Other employee expenses	3	6
GST Payable to the Australian Taxation Office	7	–
Revenue received in advance	616	616
Leases	–	1,615
Employee provisions	1,505	2,257
<b>Total no more than 12 months</b>	<b>3,782</b>	<b>7,350</b>
<b>More than 12 months</b>		
Leases	4,456	–
Employee provisions	1,907	692
<b>Total more than 12 months</b>	<b>6,363</b>	<b>692</b>
<b>Total liabilities</b>	<b>10,145</b>	<b>8,042</b>







## Part 5

### Appendices

Appendix A: Agency resource statement and resources for outcomes .....	120
Appendix B: Executive remuneration.....	122
Appendix C: Memorandums of understanding .....	124
Appendix D: Privacy statistics .....	126
Appendix E: FOI statistics.....	130
Appendix F: Acronyms and shortened forms.....	156
Appendix G: Correction of material errors.....	159
Appendix H: List of requirements .....	160

## Appendix A

### Agency resource statement and resources for outcomes

**Table A.1: OAIC resource statement 2020–21**

		Actual available appropriation for 2020–21 \$'000 (a)	Payments made 2020–21 \$'000 (b)	Balance remaining for 2020–21 \$'000 (a) – (b)
Ordinary annual services*				
Departmental appropriation		28,946	24,434	4,512
<b>Total</b>		<b>28,946</b>	<b>24,434</b>	<b>4,512</b>
Administered expenses				
<b>Total ordinary annual services</b>	<b>A</b>	<b>28,946</b>	<b>24,434</b>	
Other services				
Administered expenses		–	–	
Departmental non-operating		–	–	
Equity injections†		750	628	122
Administered non-operating		–	–	
<b>Total other services</b>	<b>B</b>	<b>750</b>	<b>628</b>	<b>122</b>
<b>Total available annual appropriations and payments</b>		<b>29,696</b>	<b>25,062</b>	<b>4,634</b>
Special appropriations				
<b>Total special appropriations</b>	<b>C</b>			
Special accounts				
<b>Total special accounts</b>	<b>D</b>			
Total resourcing and payments A + B + C + D		<b>29,696</b>	<b>25,062</b>	
Less appropriations drawn from annual or special appropriations above and credited to special accounts		–	–	
And/or payments to corporate entities through annual appropriations		–	–	
<b>Total net resourcing and payments for the OAIC</b>		<b>29,696</b>	<b>25,062</b>	

#### Note

All figures are GST exclusive.

\* Appropriation Act (No. 1) 2020–2021 and Supply Act (No. 1) 2020–2021. Includes Public Governance, Performance and Accountability Act 2013 (PGPA Act) and s 74 retained revenue receipts.

† Appropriation Act (No. 2) 2020–2021.

Table A.2: Expenses for Outcome 1

	Budget 2020-21 \$'000 (a)	Actual expenses 2020-21 \$'000 (b)	Variation 2020-21 \$'000 (a) - (b)
<b>Outcome 1</b>			
Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of Information Commissioner, freedom of information and privacy functions			
<b>Program 1.1</b>			
Complaint handling, compliance and monitoring, and education and promotion			
Administered expenses	-	-	-
Departmental expenses			
Departmental appropriation*	24,121	23,790	331
Special appropriations	-	-	-
Special accounts	-	-	-
Expenses not requiring appropriation in the Budget year	315	901	(586)
<b>Total for program 1.1</b>	<b>24,436</b>	<b>24,691</b>	<b>(255)</b>
Outcome 1 totals by appropriation type			
Administered expenses	-	-	-
Departmental expenses			
Departmental appropriation*	24,121	23,790	331
Special appropriations	-	-	-
Special accounts	-	-	-
Expenses not requiring appropriation in the Budget year	315	901	(586)
<b>Total expenses for outcome 1</b>	<b>24,436</b>	<b>24,691</b>	<b>(255)</b>
	<b>2020-21</b>	<b>2020-21</b>	
<b>Average staffing level (number)</b>	<b>120</b>	<b>120</b>	-

\* Departmental appropriation combines ordinary annual services (*Appropriation Act (No. 1) 2020-2021* and *Supply Act (No. 1) 2020-2021*) and PGPA Act, s 74 retained revenue receipts.

## Appendix B

### Executive remuneration

#### Key management personnel

The OAIC has determined that our key management personnel (KMP) are the Australian Information Commissioner and the Deputy Commissioner. Angelene Falk held the position of Australian Information Commissioner for the duration of the reporting period. Elizabeth Hampton held the position of Deputy Commissioner for the duration of the reporting period.

Details of KMP remuneration are in Note 4.2 of the financial statements. Disaggregated information is shown in Table B.1 and is prepared in accordance with the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) and Commonwealth Entities Executive Remuneration Reporting Guide for Annual Reports, Resource Management Guide No. 138 (RMG 138).

#### Senior Executive Service

The OAIC has 3 permanent and 1 temporary substantive SES positions including the Deputy Commissioner; the Assistant Commissioner, Dispute Resolution; the Assistant Commissioner, Regulation and Strategy; and the Assistant Commissioner, Corporate.

#### Remuneration policies and practices

In accordance with s 17 of the *Australian Information Commissioner Act 2010*, the Australian Information Commissioner's remuneration is set by the Remuneration Tribunal. The Remuneration Tribunal also determine increases to remuneration or allowances.

The OAIC's SES remuneration is determined by the Australian Information Commissioner under s 24(1) of the *Public Service Act 1999*. When determining SES remuneration, the Australian Information Commissioner has regard to the Australian Public Service Commission's Australian Public Service Remuneration Report and comparable agencies.

SES determinations set out the salary on commencement and provide for increments in salary, in line with any percentage up to 5% set by the Remuneration Tribunal for the Australian Information Commissioner.

To be eligible for an increase in salary an SES officer must obtain an annual performance rating of effective or above. The OAIC's performance management framework, Talking about performance, enables SES officers' performance agreements. Agreement objectives are directly linked to the SES officer's business line responsibilities of the *OAIC Corporate Plan*.

The Australian Information Commissioner sets and reviews the Deputy Commissioner's performance agreement. The Deputy Commissioner sets and reviews Assistant Commissioners' performance agreements.

#### Remuneration governance arrangements

As a small agency, the Australian Information Commissioner is responsible for setting and monitoring remuneration for the OAIC's SES officers.

Table B.1: KMP remuneration

Name	Position title	Short-term benefits			Post-employment benefits	Other long-term benefits		Termination benefits	Total remuneration
		Base salary	Bonuses	Other benefits and allowances		Long service leave	Other long-term benefits		
Angelene Falk	Australian Information Commissioner	\$434,439	–	–	\$35,167	\$10,781	–	–	\$480,387
Elizabeth Hampton	Deputy Commissioner	\$282,158	–	–	\$50,605	\$6,656	–	–	\$339,418
<b>Total</b>		<b>\$716,597</b>	<b>–</b>	<b>–</b>	<b>\$85,772</b>	<b>\$17,436</b>	<b>–</b>	<b>–</b>	<b>\$819,805</b>

Table B.2: Average SES remuneration

Remuneration band	Number of senior executives	Short-term benefits			Post-employment benefits	Other long-term benefits		Termination benefits	Total remuneration
		Average base salary	Average bonuses	Average other benefits and allowances		Average long service leave	Average other long-term benefits		
\$0–\$220,000	3	\$87,501	–	–	\$13,769	\$1,101	–	–	\$102,371
\$220,001–\$245,000	1	\$193,034	–	–	\$29,260	\$4,684	–	–	\$226,978
\$245,001–\$270,000	1	\$219,877	–	–	\$38,375	\$5,291	–	–	\$263,543

## Appendix C

### Memorandums of understanding

#### Australian Capital Territory Government

Under our Memorandum of Understanding (MOU) with the Australian Capital Territory (ACT) Government we continue to provide privacy services to ACT public sector agencies in relation to the *Information Privacy Act 2014* (ACT). These services include:

- responding to privacy complaints and enquiries about ACT public sector agencies
- providing policy and legislation advice and guidance
- providing advice on data breach notifications, where applicable
- carrying out privacy assessments.

For these services, the OAIC received \$177,500 (GST exclusive) from the ACT Government in 2020–21.

For further information on our activities under this MOU, see the *Memorandum of Understanding with the Australian Capital Territory for the provision of privacy services: Annual Report 2020–21* on the OAIC website.

#### Australian Digital Health Agency

Under our MOU with the Australian Digital Health Agency, the OAIC continued to provide support and assistance on privacy matters relating to both the My Health Record system and the Healthcare Identifiers (HI) Service. These services included:

- responding to enquiries and complaints relating to the privacy aspects of the My Health Record system and HI Service
- investigating acts and practices that may have been a misuse of Healthcare Identifiers or a contravention of the My Health Record system, if required
- receiving data breach notifications and providing advice
- investigating failures to notify My Health Record system data breaches
- conducting privacy assessments
- developing guidance material for individuals and participants in the My Health Record system and HI Service
- liaising and coordinating on privacy-related matters and activities with key stakeholders
- preparing relevant communication materials
- providing policy and legislation advice relating to the privacy aspects of the My Health Record system and the HI Service
- monitoring and participating in digital health developments.

During this reporting period, the OAIC received \$2,070,000 (GST exclusive).

For further information on our activities under this MOU, see the *Annual report of the Australian Information Commissioner's activities in relation to digital health 2020–21* on the OAIC website.

## Australian Human Rights Commission

The OAIC continued the MOU with the Australian Human Rights Commission (AHRC) for the provision of corporate services.

Under this MOU, the AHRC provides a number of corporate services to the OAIC, including financial, information technology and human resource related tasks. We also sublet premises in Sydney from the AHRC.

We paid \$1,846,066 (GST exclusive) for corporate services and \$1,200,940 (GST exclusive) for premises (including outgoings) to the AHRC.

## Department of Home Affairs – NFBMC

In November 2017, the Attorney-General's Department and the OAIC signed an MOU for the provision of privacy assessments in relation to the National Facial Biometric Matching Capability (NFBMC).

On 20 December 2017, the Department of Home Affairs assumed responsibility for the NFBMC as part of Machinery of Government changes and subsequently assumed responsibility for the roles and responsibilities under the MOU.

In February 2018, the Identity-matching Services Bill 2018 was introduced into Parliament but was not passed, so our privacy assessments have been deferred to later financial years. In May 2019 and June 2020, we signed variations to the MOU to defer commencing privacy assessments and associated payments to later years. In June 2021, the OAIC and Home Affairs agreed to terminate the MOU. The Department and the OAIC intend to negotiate a new MOU ahead of the passage of the Identity-matching Services Bill.

## Department of Home Affairs – passenger name record data assessment

Under a Letter of Exchange with the Department of Home Affairs, the OAIC will provide a passenger name record (PNR) data-related assessment in 2020–21 and 2021–22, examining whether personal information is being maintained and handled in accordance with the Australian Privacy Principles.

In September 2019, the OAIC and the Department of Home Affairs deferred this privacy assessment to the 2020–21 financial year. Assessment fieldwork was undertaken in November 2020 over 3 days in Sydney. The assessment report was finalised on 30 June 2021. A summary of this assessment is on page 60.

During this reporting period, the Office of the Australian Information Commissioner received \$75,000 (GST inclusive).

### Note

The agreement between Australia and the European Union (EU) on the processing and transfer of PNR data states that 'The Australian Customs and Border Protection Service has arrangements in place under the Privacy Act for the Information Commissioner to undertake regular formal audits of all aspects of Australian Customs and Border Protection Service's EU-sourced PNR data use, handling and access policies and procedures'.

## Appendix D

### Privacy statistics

#### Privacy complaints

**Table D.1: Australian Privacy Principles issues in privacy complaints in 2020–21**

APP issue*	Number of complaints	% of total
Use or disclosure of personal information (APP 6)	724	29.3
Security of personal information (APP 11)	698	28.2
Access to personal information (APP 12)	444	17.9
Collection of solicited personal information (APP 3)	316	12.8
Quality of personal information (APP 10)	253	10.2
Direct marketing (APP 7)	96	3.9
Notification of the collection of personal information (APP 5)	94	3.8
Correction of personal information (APP 13)	48	1.9
Open and transparent management of personal information (APP 1)	10	0.4
Anonymity and pseudonymity (APP 2)	5	0.2
Dealing with unsolicited personal information (APP 4)	5	0.2
Cross-border disclosure of personal information (APP 8)	3	0.1
Adoption, use or disclosure of government related identifiers (APP 9)	2	0.1
<b>Total</b>	<b>2,698</b>	

#### Note

A complaint may cover more than one issue.



**Table D.2: Main remedies agreed in conciliated privacy complaints in 2020–21**

Remedy*	Jurisdiction					Total
	Privacy Principles†	Credit reporting	Spent convictions & TFN	My Health Record	NDB scheme	
Compensation	68	2	1	–	–	71
Record amended	112	24	4	1	–	141
Apology	113	2	4	–	–	119
Access provided	103	3	–	–	–	106
Other & confidential	83	1	6	–	–	90
Changed procedures	65	2	2	–	1	70
Staff training or counselling	35	–	–	–	1	36
<b>Total</b>	<b>579</b>	<b>34</b>	<b>17</b>	<b>1</b>	<b>2</b>	<b>633</b>

\* A resolved complaint may involve more than one type of remedy.

† Includes APPs, National Privacy Principles and the ACT's Territory Privacy Principles.

**Table D.3: Compensation amounts in closed privacy complaints in 2020–21**

Compensation	Total
Up to \$1,000	32
\$1,000 to \$5,000	24
\$5,001 to \$10,000	4
Over \$10,001	11
<b>Total</b>	<b>71</b>

\* Only includes APP complaints.

Table D.4: Privacy assessments in 2020–21

Privacy assessment subject		Number of entities assessed	Year opened	Date closed
1	Access Canberra (ACT MOU)	1	2019–20	23 Apr 2021
2	Department of Home Affairs – passenger name record data	1	2019–20	30 Jun 2021
3	COVIDSafe Assessment 1 – Access Controls National Data Store	2	2019–20	10 Jun 2021
4	COVIDSafe Assessment 2 – state and territory health authorities access controls	8	2020–21	Ongoing
5	COVIDSafe Assessment 3 – COVIDSafe application functionality, privacy policy and collection notices	1	2020–21	Ongoing
6	COVIDSafe Assessment 4 – retention and deletion of COVID app data	1	2020–21	Ongoing
7	ACT Government – follow up assessment of Housing ACT	1	2020–21	Ongoing
8	Section 309 inspections (Telecommunications Act), ss 306 and 306A obligations – Telstra	1	2020–21	Ongoing
9	Section 309 inspections (Telecommunications Act), ss 306 and 306A obligations – Optus	1	2020–21	Ongoing
10	Section 309 inspections (Telecommunications Act), ss 306 and 306A obligations – TPG	1	2020–21	Ongoing
11	Section 309 inspections (Telecommunications Act), ss 306 and 306A obligations – Vodafone	1	2020–21	Ongoing
12	Privacy Impact Assessment register/s 15.1 Privacy Code compliance	169*	2020–21	Ongoing
13	Consumer Data Right Assessment 1 (compliance of data holders with Privacy Safeguard 1)	4	2020–21	Ongoing

\* Number of entities is an estimate based on all Australian Government agencies covered by the Privacy Act.

**Table D.5: Digital health assessments in 2020–21**

Privacy assessment subject	Number of entities assessed	Year opened	Date closed
Assessment of pathology and diagnostic imaging services – APPs 1.2 and 11 and Rule 42 of the My Health Record Rules	8	2018–19	4 Sep 2020
Assessment of Chamonix mobile health application that accesses My Health Records – APPs 1.2 and 5	1	2020–21	23 Apr 2021
Assessment of Telstra mobile health application that accesses My Health Records – APPs 1.2 and 5	1	2020–21	23 Apr 2021
Assessment of general practice clinics – APPs 1.2 and 11 and Rule 42 My Health Records Rule	300	2020–21	Ongoing

**Table D.6: Enhanced welfare payment integrity (data matching) assessments in 2020–21**

Privacy assessment subject	Number of entities assessed	Year opened	Date closed
Department of Human Services – information security for the Non-Employment Income Data Matching (NEIDM) and Pay-As-You-Go (PAYG) programs	1	2017–18	17 Jul 2021
Department of Veterans' Affairs – APP 1.2 assessment	1	2019–20	30 Jun 2021
Department of Human Services – Annual investment income report (AIIR) data matching program	1	2019–20	19 Oct 2020

## Appendix E

### FOI statistics

This appendix contains information regarding:

- requests for access to documents
- applications for amendment of personal records
- charges
- disclosure logs
- review of freedom of information (FOI) decisions
- complaints about agency FOI actions
- the impact of FOI on agency resources
- the impact of Information Publication Scheme (IPS) on agency resources.

It has been prepared using data collected from Australian Government agencies and ministers subject to the *Freedom of Information Act 1982* (FOI Act), and separately from the Administrative Appeals Tribunal (AAT) and records of the OAIC. Australian Government agencies and ministers are required to provide, among other details, information about:

- the number of FOI requests made to them
- the number of decisions they made granting, partially granting or refusing access, and the number and outcome of applications for internal review
- the number and outcome of requests to them to amend personal records
- charges collected by them.<sup>1</sup>

The data given by ministers and agencies for the preparation of this appendix is published on [data.gov.au](https://data.gov.au).<sup>2</sup>

### Requests for access to documents

#### Types of FOI requests

The term ‘FOI request’ means a request for access to documents made under s 15 of the FOI Act. Applications for amendment or annotation of personal records under s 48 are dealt with separately below.

A request for personal information means a request for documents that contain information about a person who can be identified (usually the applicant, although not necessarily). A request for ‘other’ information means a request for all other documents, such as documents concerning policy development or government decision making.

The FOI Act requires that agencies and ministers provide access to documents in response to requests that meet the requirements of s 15 of the FOI Act. The statistics in this report do not take account of requests that did not satisfy those requirements.

The Governor-General authorised one Administrative Arrangements Order (AAO) in 2020–21 on 18 March 2021. This AAO changed the functions and administrative responsibilities of some departments and agencies and resulted in changes to the number and composition of FOI requests received by the affected agencies during the year.

<sup>1</sup> Australian Government ministers and agencies, and Norfolk Island authorities, are required by s 93 of the FOI Act and reg 8 of the Freedom of Information (Prescribed Authorities, Principal Officers and Annual Report) Regulations 2017 to submit statistical returns to the OAIC every quarter and provide a separate annual report on FOI and IPS costs.

<sup>2</sup> The data reported in this appendix has been rounded to whole numbers with the exception of staff hours. In some cases this means that numbers will not add to 100%.

### Number of FOI requests received

Table E.1 compares the number of FOI requests received in each of the past 6 reporting years, including the percentage increase or decrease from the previous financial year.

The number of FOI requests made to Australian Government agencies decreased by 16% in 2020–21 to 34,797, which was 6,536 fewer than the previous financial year.

As can be seen from Table E.2 (page 133), the decrease in the number of FOI requests has principally been the result of decreases in requests made to the 20 agencies that receive the highest number of FOI requests, in particular the Department of Home Affairs, Services Australia, the Department of Veterans' Affairs and the National Disability Insurance Agency (NDIA).

While some agencies have attributed decreases in the number of FOI requests received during 2020–21 to the impact of the COVID-19 pandemic, the decrease in total FOI requests (6,536 fewer than in 2019–20) is largely the result of a decrease in requests for personal information experienced by Home Affairs, Services Australia, Veterans' Affairs and the NDIA.

### Number of FOI requests received by an agency or minister

In 2020–21, Home Affairs, Services Australia and Veterans' Affairs together continued to receive the majority of FOI requests received by Australian Government agencies (68% of the total). Nearly all of these requests (89%) were from individuals seeking access to personal information.

The 20 agencies that received the largest number of requests in 2020–21 are shown in Table E.2, with a

comparison to the number of requests received by those agencies in 2019–20.

The agencies that experienced significant increases in FOI requests in 2020–21 compared with 2019–20 include the Department of Industry, Science, Energy and Resources, or DISER (up from 128 to 310, a 142% increase), the Department of Foreign Affairs and Trade, or DFAT (up from 195 to 277, a 42% increase) and the Department of Infrastructure, Transport, Regional Development and Communications, or DITRDC (up from 160 to 220, a 38% increase).

DITRDC has attributed its large increase in FOI requests to factors including its expansion following machinery of government changes and a heightened public interest in policies and programs administered by the department through the COVID-19 pandemic. DISER has advised that it received a significant number of applications relating to a particular grant program, which account for approximately 60% of the applications made in 2020–21.

Other agencies, however, experienced significant decreases in FOI requests in 2020–21 compared with 2019–20. Some agencies have attributed the decrease in FOI requests to the use of administrative information access schemes which give individuals access to their personal information without the requirement for a request under the FOI Act.

For example, the NDIA received 40% fewer requests in 2020–21 compared with 2019–20. The NDIA has said that on 1 June 2020, it made changes to improve National Disability Insurance Scheme participants' access to their personal information through a Participant Information Access scheme, which gives participants administrative access to their personal information outside the FOI process. Veterans' Affairs also received 21% fewer requests

**Table E.1: FOI requests received over the past 6 years**

	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21
Number of FOI requests received	37,966	39,519	34,438	38,879	41,333	34,797
% change from previous financial year	+7	+4	–13	+13	+6	–16

in 2020–21 compared to 2019–20, stating it has processed more requests for personal information under administrative access schemes, which has seen a decrease in FOI requests.

Services Australia experienced a 38% decrease in requests. It also advises that, where possible, it continues to process access to documents administratively. It also experienced a surge in FOI requests from a specific cohort of applicants during the second half of 2019–20, accounting for unusually high numbers in that year. These matters were subsequently resolved in a separate process, which led to a reduction in requests in 2020–21.

Similarly, the Department of the Prime Minister and Cabinet (PM&C) experienced a 47% decrease in FOI requests in 2020–21, following large spike in FOI requests in 2019–20 due to a number of requests from one applicant.

### Requests for personal and ‘other’ documents

In 2020–21, 26,715 FOI requests (or 77% of all requests received) were for documents containing personal information. This is a lower proportion than in previous years; in 2019–20, 81% of all requests were for predominantly personal information, in 2018–19 it was 83%, in 2017–18 it was 82%, in 2016–17 it was 82% and in 2015–16 it was 87%.

The decrease in the proportion of personal FOI requests may be the result of agencies increasingly making documents available to the public using online portals such as myGov and those provided by the Australian Taxation Office, and through other administrative access schemes, such as those implemented by the NDIA, Veterans’ Affairs and Services Australia.

In 2020–21, there were 8,082 FOI requests (or 23% of all requests) for ‘other’ (non-personal) information. This is a higher proportion than in 2019–20, when 19% of all requests were for other information. In 2018–19 the proportion was 17%, in 2017–18, 18%, in 2016–17, 18%, in 2015–16, 13% and in 2014–15, 15%.

However, there was also considerable variance across government in the number and proportion of personal and ‘other’ information FOI requests in 2020–21.

Home Affairs experienced a 10% decrease in total FOI requests in 2020–21 (down by 1,736). It received 13% fewer personal FOI requests, but 14% more requests for access to other information.

While the NDIA experienced a 40% decline in total FOI requests in 2020–21 including a 51% decline in requests for personal information, requests for access to ‘other’ information increased by 148% to 201 (up from 81 in 2019–20). Similarly, Veterans’ Affairs experienced a 21% decrease in total FOI request numbers, but had a 95% increase in requests for ‘other’ information (117, up from 60 in 2019–20).

### FOI requests finalised

Agencies and ministers commenced 2020–21 with significantly more FOI requests on hand requiring a decision than the previous financial year (23% more than at the beginning of 2019–20).

In 2020–21 there was:

- a decrease in FOI requests received (16% fewer than in 2019–20)
- a slight reduction in the number of requests decided (9% fewer than in 2019–20)
- fewer requests transferred between agencies (41% less than in 2019–20)
- 15% more requests on hand at the end of the year (6,659) than at the beginning of the financial year (5,814)
- a decrease in the number of FOI requests withdrawn by applicants (32% fewer than in 2019–20).

Reasons for fewer requests being withdrawn during this reporting period may include:

- fewer FOI requests overall for personal information (20% fewer in 2020–21 than in 2019–20), due to the increased use of administrative access schemes to provide individuals access to their personal documents outside the FOI Act
- fewer FOI requests transferred from an agency or minister (41% fewer in 2020–21 than in 2019–20)

**Table E.2: Agencies by number of FOI requests received**

Agency	2019–20					2020–21					
	Rank*	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other	Total	% of all FOI requests	Change in total
Department of Home Affairs	1	15,666	1,895	17,561	42	1	13,667	2,158	15,825	46	–1,736
Services Australia	2	8,570	312	8,882	21	2	5,254	230	5,484	16	–3,398
Department of Veterans' Affairs	3	2,393	60	2,453	6	3	1,810	117	1,927	6	–526
Administrative Appeals Tribunal	4	1,550	14	1,564	4	4	1,568	32	1,600	5	36
National Disability Insurance Agency	6	1,439	81	1,520	4	5	709	201	910	3	–610
Australian Taxation Office	5	805	160	965	2	6	728	177	905	3	–60
Australian Federal Police	7	648	179	827	2	7	619	135	754	2	–73
Department of Health	9	71	486	557	1	8	119	514	633	2	76
Department of Defence	8	287	332	619	1	9	228	336	564	2	–55
Australian Transaction Reports and Analysis Centre	10	232	238	470	1	10	221	153	374	1	–96
Immigration Assessment Authority	11	378	3	381	1	11	312	5	317	1	–64
Department of Industry, Science, Energy and Resources†	N/A	1	127	128	N/A	12	–	310	310	1	182
Australian Securities and Investments Commission	13	73	189	262	1	13	67	214	281	1	19

Agency	2019–20					2020–21				
	Rank*	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other	Total	% of all FOI requests
Department of Foreign Affairs and Trade	18	69	126	195	1	14	90	187	277	1
Department of Agriculture, Water and the Environment	16	6	216	222	1	15	5	243	248	1
Attorney-General's Department	15	57	173	230	1	16	70	151	221	1
Department of Infrastructure, Transport, Regional Development and Communications†	N/A	–	160	160	N/A	17	–	220	220	1
Department of Education, Skills and Employment	20	80	108	188	1	18	87	132	219	1
Department of the Treasury	17	5	192	197	1	19	9	187	196	1
Office of the Australian Information Commissioner	14	142	90	232	1	20	122	71	193	1
<b>Total top 20</b>	–	<b>32,602</b>	<b>5,256</b>	<b>37,858</b>	<b>94</b>		<b>25,685</b>	<b>5,773</b>	<b>31,458</b>	<b>96</b>
Remaining agencies	–	982	2,493	3,475	8		1,030	2,309	3,339	10
<b>Total</b>	–	<b>33,584</b>	<b>7,749</b>	<b>41,333</b>	<b>102</b>		<b>26,715</b>	<b>8,082</b>	<b>34,797</b>	<b>106</b>

**Note**

Figures may not add to 100% due to rounding.

\* The Department of the Prime Minister and Cabinet appeared as a top 20 agency in 2019–20 but not in 2020–21.

† Denotes an agency not in the top 20 agencies in 2019–20.



- decreased use of the practical refusal provisions in s 24 of the FOI Act (if an applicant does not respond to a practical refusal notice issued

under s 24AB of the FOI Act they are deemed to have withdrawn their FOI request – see s 24AB(7)).

**Table E.3: Overview of FOI requests received and finalised**

FOI request processing	2019–20	2020–21	% change
On hand at the beginning of the year	4,713 <sup>§</sup>	5,814	23
Received during the year	41,333	34,797	–16
Requiring decision*	46,046	40,611	–12
Withdrawn	10,000	6,834	–32
Transferred	747	438	–41
Decided†	29,358	26,680	–9
Finalised‡	40,105	33,952	–15
On hand at the end of the year	5,941	6,659	12

\* Total of FOI requests on hand at the beginning of this reporting period and requests received during this reporting period.

† Covers access granted in full, part or refused.

‡ The sum of requests withdrawn, transferred and decided.

§ Agencies can ask the OAIC to change the number of FOI requests on hand at the beginning of a reporting period if the number carried over from the previous reporting period is incorrect.

The proportion of FOI requests granted in full in 2020–21 was 41%, down from 47% in 2019–20. The proportion granted in full in 2018–19 was 52% and in 2017–18 it was 50%.

The proportion of FOI requests granted in part increased to 41% in 2020–21, up from 38% in 2019–20.

The number of FOI requests refused in 2020–21 (including requests refused because the documents sought do not exist or could not be found, or a

practical refusal reason exists, as well as when exemptions have been applied) increased to 18%, compared with 15% in 2019–20.

As noted above, there was an increase in the number of ‘other’ (non-personal) FOI requests made to agencies in 2020–21. Requests for ‘other’ information are generally more complex than requests for access to personal information and may be more likely to be subject to a wider range of exemptions under the FOI Act.

**Table E.4: Outcomes of FOI requests decided**

Decision	Personal 2019–20	Other 2019–20	Total 2019–20	%	Personal 2020–21	Other 2020–21	Total 2020–21	%
Granted in full*	12,296	1,431	13,727	47	9,419	1,559	10,978	41
Granted in part†	9,350	1,871	11,221	38	8,968	2,016	10,984	41
Refused	2,136	2,274	4,410	15	2,337	2,381	4,718	18
<b>Total</b>	<b>23,782</b>	<b>5,576</b>	<b>29,358</b>	<b>100</b>	<b>20,724</b>	<b>5,956</b>	<b>26,680</b>	<b>100</b>

\* The release of all documents within the scope of the request, as interpreted by the agency or minister.

† A document is granted in part when a part, or parts, of a document have been redacted to remove any irrelevant, exempt or conditionally exempt matter.

Table E.5 lists the top 20 agencies by the number of FOI decisions made in 2020–21, and shows differences in the outcome of FOI requests compared to other agencies.

The percentage of FOI requests granted in full is much higher for the agencies in the top 20 (43%) than it is for other agencies (20%). This is because the 5 agencies which receive the most FOI requests (Table E.2) – accounting for 76% of all FOI requests received by the Australian Government – receive predominantly personal FOI requests which are more likely to be granted in full than ‘other’ FOI requests (Table E.4).

Agencies processing higher proportions of FOI requests for personal information generally have higher rates of FOI requests granted in full than the 2020–21 average of 41%, with the exception of Services Australia.

However, 14 of the top 20 agencies refused access to documents at levels higher than the average across all agencies (18%). Several agencies had refusal rates of over 50%, including the Department of Health, DISER, the Attorney-General’s Department, DFAT, PM&C and the Australian Postal Corporation. These agencies process proportionally higher numbers of FOI requests for ‘other’ information. In some circumstances, the proactive publication of ‘other’ information can reduce the

need for requests for this type of information to be made under the FOI Act.

### Use of exemptions

Table E.6 shows how Australian Government agencies and ministers claimed exemptions under the FOI Act when processing FOI requests in 2020–21. More than one exemption may be applied in processing an FOI request.

Exemptions were not claimed or were not relevant in relation to 16,020 FOI requests decided in 2020–21, or 60% of all FOI requests decided (compared to 64% in 2019–20). The decrease may relate to the overall decrease in the number of FOI requests granted in full.

Overall, there was very little change in the application of exemptions in 2020–21, when compared with previous years. The personal privacy exemption (s 47F) remains the most claimed exemption. It was applied in 38% of all FOI requests in which an exemption was claimed in 2020–21, the same percentage as 2019–20 and 2018–19.

The next most claimed exemptions were:

- s 47E (certain operations of agencies: 21%, slightly up from 20% in 2019–20)
- s 47C (deliberative processes: 10%, up from 8% in 2019–20)

Table E.5: Top 20 agencies by numbers of FOI requests decided in 2020–21

Agency	Granted in full	%	Granted in part	%	Refused	%	Total
Department of Home Affairs	6,676	48	5,621	41	1,561	11	13,858
Services Australia	548	23	1,403	59	411	17	2,362
Department of Veterans' Affairs	1,336	78	296	17	80	5	1,712
Administrative Appeals Tribunal	714	57	498	40	32	3	1,244
National Disability Insurance Agency	410	54	254	34	89	12	753
Australian Federal Police	22	3	438	71	160	26	620
Australian Taxation Office	115	19	296	49	199	33	610
Department of Health	72	17	76	18	283	66	431
Department of Defence	85	20	209	50	126	30	420
Australian Transaction Reports and Analysis Centre	33	9	227	63	103	28	363
Immigration Assessment Authority	261	85	42	14	4	1	307
Australian Securities and Investments Commission	34	15	92	39	109	46	235
Department of Industry, Science, Energy and Resources	16	7	94	43	111	50	221
Attorney-General's Department	15	8	54	29	115	63	184
Department of Foreign Affairs and Trade	14	8	68	41	86	51	168
Department of Infrastructure, Transport, Regional Development and Communications	23	14	79	49	58	36	160
Department of Agriculture, Water and the Environment	28	18	86	56	40	26	154
Department of the Prime Minister and Cabinet	16	11	56	37	79	52	151
Australian Postal Corporation	15	11	14	10	113	80	142
Office of the Australian Information Commissioner	52	38	45	33	39	29	136
<b>Top 20</b>	<b>10,485</b>	<b>43</b>	<b>9,948</b>	<b>41</b>	<b>3,798</b>	<b>16</b>	<b>24,231</b>
Remaining agencies	493	20	1,036	42	920	38	2,449
<b>Total</b>	<b>10,978</b>	<b>41</b>	<b>10,984</b>	<b>41</b>	<b>4,718</b>	<b>18</b>	<b>26,680</b>

- s 37 (documents affecting enforcement of law and protection of public safety: 8%, a decrease compared to 2019–20 and 2018–19 when it accounted for 10% of all exemptions applied)
- s 38 (documents to which secrecy provisions apply: 6%, the same as 2019–20 and 2018–19) and s 33 (documents affecting national security, defence or international relations: 4%, the same as 2019–20).

**Table E.6: Use of exemptions in FOI decisions in 2020–21**

FOI Act reference	Exemption	Personal	Other	Total	% of all exemptions applied
s 33	Documents affecting national security, defence or international relations	513	233	746	4
s 34	Cabinet documents	2	137	139	1
s 37	Documents affecting enforcement of law and protection of public safety	1,173	185	1,358	8
s 38	Documents to which secrecy provisions of enactments apply	870	118	988	6
s 42	Documents subject to legal professional privilege	236	195	431	3
s 45	Documents containing material obtained in confidence	43	171	214	1
s 45A	Parliamentary Budget Office documents	–	1	1	0*
s 46	Documents disclosure of which would be contempt of Parliament or contempt of court	24	7	31	0*
s 47	Documents disclosing trade secrets or commercially valuable information	36	191	227	1
s 47A	Electoral rolls and related documents	4	–	4	0*
s 47B	Commonwealth-state relations	127	77	204	1
s 47C	Deliberative processes	1,281	415	1,696	10
s 47D	Financial or property interests of the Commonwealth	207	23	230	1
s 47E	Certain operations of agencies	2,709	822	3,531	21
s 47F	Personal privacy	5,494	1,055	6,549	38
s 47G	Business	290	460	750	4
s 47H	Research	1	3	4	0*
s 47J	The economy	1	5	6	0*

\* Denotes a figure of less than 1%.

## Use of practical refusal

Section 24AB of the FOI Act sets out that a 'request consultation process' must be undertaken if a 'practical refusal reason' exists (s 24AA). A practical refusal reason exists if the work involved in processing the FOI request would substantially and unreasonably divert the agency's resources from its other operations, or if the FOI request does not adequately identify the documents sought.

The request consultation process involves the agency sending a written notice to the FOI applicant advising them that the agency intends to refuse the request and providing details of how the FOI applicant can consult the agency. The FOI Act imposes an obligation on the agency to take reasonable steps to help the FOI applicant revise their request so that the practical refusal reason no longer exists.

Table E.7 provides information about how agencies and ministers engaged in request consultation processes under s 24AB of the FOI Act in 2020–21 and the outcome of those processes.

Agencies sent 17% fewer notices of an intention to refuse an FOI request for a practical refusal reason in 2020–21, than in 2019–20, when 3,803 notices were sent. The reason for this decrease was a decrease in the number of practical refusal notices issued by Home Affairs (2,007 notices in 2020–21, compared to 2,713 in 2019–20). Home Affairs issued practical refusal notices for 13% of all the FOI requests it

received during 2020–21 (Home Affairs received 15,825 FOI requests).

In 2020–21, 48% of the FOI requests subject to a notice of intention to refuse a request were subsequently refused or withdrawn. This is a decrease compared to the proportions in 2019–20 (57%)<sup>3</sup> and 2018–19 (77%).

Lower proportions of FOI requests subsequently refused or withdrawn after a practical refusal notice is issued suggests agencies have been better at assisting applicants to revise the scope of their requests so they can be processed. This signals an improvement in the effectiveness of agency consultations under s 24AB of the FOI Act in 2020–21 when compared with previous years.

Home Affairs issued 64% of all notices of an intention to refuse a request for a practical refusal reason in 2020–21 (2,007). It subsequently processed 1,218 of these requests – or 61% – an improvement on 2019–20 when it processed 46% of FOI requests after issuing a notice of intention to refuse a request for a practical refusal reason.<sup>4</sup>

For all other agencies the percentage of practical refusal matters subsequently processed was 36%, which is slightly less than 2019–20 when it was 40%. This low rate indicates agencies' consultation with applicants has not always been successful in removing the practical refusal reason. For example, the Department of Defence issued 101 notices of intention to refuse a request for a practical refusal

**Table E.7: Use of practical refusal in 2020–21**

Practical refusal processing step	Personal	Other	Total	%*
Notified in writing of intention to refuse request	2,256	887	3,143	N/A
Request was subsequently refused or withdrawn	969	551	1,520	48
Request was subsequently processed	1,287	336	1,623	52

\* Percentage of the total number of notices advising of an intention to refuse a request for a practical refusal reason.

<sup>3</sup> Based on revised figures provided by the Department of Home Affairs – see erratum notice at Appendix G.

<sup>4</sup> Based on revised figures provided by the Department of Home Affairs – see erratum notice at Appendix G.

reason and subsequently processed only 18 FOI requests (18%).

### Time taken to respond to FOI requests

Agencies and ministers have 30 days to make a decision under the FOI Act. The FOI Act allows for the timeframe to be extended in certain circumstances.<sup>5</sup>

If a decision is not made on an FOI request within the statutory timeframe (including any extension period) then s 15AC of the FOI Act provides that a decision refusing access is deemed to have been made. Nonetheless, agencies should continue to process a request that has been deemed to be refused.

In 2020–21, 77% of all FOI requests determined were processed within the applicable statutory time period: 76% of all personal information requests and 84% of all non-personal requests. This represents a reduction in the timeliness of decision making from 2019–20, when 79% of all FOI requests were decided within time, and from 2018–19, when 83% of all FOI requests were decided within time.

The COVID-19 pandemic affected the ability of some Australian Government agencies to respond to FOI requests within the statutory timeframes in 2020–21. In some agencies, FOI staff were redeployed to work in frontline customer service roles, while the internal redeployment of other staff to meet service delivery needs made it difficult to obtain documents to satisfy FOI requests and to engage with decision makers, many of whom assumed additional responsibilities as part of their agency's response to the pandemic. Some agencies were impacted by reduced staff numbers, voluntary redundancies, difficulties in searching and retrieving documents in a remote working environment, and challenges in remotely onboarding and training new FOI staff. Other agencies were impacted by the complexity of

some requests, particularly requests relating to the government's response to the COVID-19 pandemic.

Some agencies decided fewer than 50% of FOI requests within the statutory timeframes in 2020–21. This includes the Norfolk Island Regional Council and the Office of the Prime Minister.

Because of the large number of FOI requests received by Home Affairs, it is worth noting that its compliance with statutory timeframes was 62% in 2020–21, which is below the average of 77%. This represents a decrease in timeliness compared to 2019–20 (when it was 66%) and 2018–19 (when it was 74%). Home Affairs decided only 61% of personal FOI requests within statutory timeframes, a decline in timeliness from 2019–20, when it was 69%. In 2020–21, it decided 65% of 'other' (non-personal) within the statutory timeframes, which represents a significant improvement on 2019–20, when it was 37%.

Home Affairs has advised that in 2020–21 it made a range of improvements to the way FOI requests are handled, with a particular focus on non-personal requests. These align with recommendations made in the Information Commissioner's investigation report.<sup>6</sup> Home Affairs also worked to finalise older personal access requests, which can be more complex and time-consuming to process than new requests. Home Affairs advises it finalised more cases older than 90 days in 2020–21 than in 2019–20.

During the reporting period, there was an increase in the number of FOI requests decided more than 90 days over the applicable statutory time period compared to previous years; 12% of all requests decided in 2020–21 were decided more than 90 days after the expiry of the statutory processing period. This percentage was 10% in 2019–20 and 2% in 2018–19.

<sup>5</sup> An agency may extend the period of time to make a decision by agreement with the applicant (s 15AA), or to undertake consultation with a third party (ss 15(6)–(8)). An agency can also apply to the Information Commissioner for more time to process a request when the request is complex or voluminous (s 15AB), or when access has been deemed to have been refused (ss 15AC and 51DA) or deemed to have been affirmed on internal review (s 54D). These extension provisions acknowledge there are circumstances when it is appropriate for an agency to take more than 30 days to process a request. When an agency has obtained an extension of time to deal with an FOI request and finalises the request within the extended time, the request is recorded as having been determined within the statutory time period.

<sup>6</sup> During 2020–21, the Information Commissioner finalised an investigation into the Department of Home Affairs' compliance with the statutory processing period in the FOI Act when processing FOI requests for non-personal information.

**Table E.8: FOI request response time 2019–20 and 2020–21**

Response time	2019–20				2020–21			
	Personal	Other	Total	%	Personal	Other	Total	%
Within applicable statutory time period	19,002	4,083	23,085	79	15,661	5,002	20,663	77
Up to 30 days over applicable statutory time period	1,315	791	2,106	7	1,005	532	1,537	6
31–60 days over applicable statutory time period	420	281	701	2	414	190	604	2
61–90 days over applicable statutory time period	380	156	536	2	474	90	564	2
More than 90 days over applicable statutory time period	2,665	265	2,930	10	3,170	142	3,312	12
<b>Total</b>	<b>23,782</b>	<b>5,576</b>	<b>29,358</b>	<b>100</b>	<b>20,724</b>	<b>5,956</b>	<b>26,680</b>	<b>99</b>

**Note**

Figures may not add to 100% due to rounding.

A number of agencies that process large numbers of FOI requests (more than 50) decided them all within the statutory time period in 2020–21. These agencies include the Immigration Assessment Authority (307), the Department of Agriculture, Water and the Environment (154), Comcare (115), the Civil Aviation Safety Authority (120) and the Fair Work Commission (51).

**Applications for amendment of personal records**

Section 48 of the FOI Act confers a right on a person to apply to an agency or to a minister to amend a document to which lawful access has been granted, when the document contains personal information about the applicant:

- that is incomplete, incorrect, out of date or misleading, and
- that has been used, is being used, or is available for use by the agency or minister for an administrative purpose.

In 2020–21, 9 agencies received 820 amendment applications (no applications were received by ministers). This is a 14% increase in applications from 2019–20, when 717 applications were received. This follows a 7% increase in applications in 2019–20 compared with 2018–19, when 673 amendment applications were made.

The increase in amendment applications is largely due to increases in applications received by Home Affairs (up 16% in 2020–21 compared with 2019–20). Some agencies also received amendment applications when they did not receive them the previous year, such as the Australian Federal Police, Commonwealth Ombudsman, the Department of Education, Skills and Employment and the Fair Work Commission.

Table E.10 compares the decision making for amendment applications during the reporting period with 2019–20. In 2020–21, a decision was made to amend or annotate a person's personal record in 88% of all decided applications, the same

**Table E.9: Response times greater than 90 days after expiry of applicable statutory period in 2020–21**

Agency	Total requests decided	Requests decided more than 90 days after statutory period	% FOI requests received by agency or minister
Australian Institute of Aboriginal and Torres Strait Islander Studies	2	1	50
Treasurer	4	1	25
Norfolk Island Regional Council	38	9	24
Department of Home Affairs	13,858	3,248	23
Attorney-General	9	2	22
Sport Integrity Australia	7	1	14
Australian Broadcasting Corporation	52	6	12
Department of Foreign Affairs and Trade	168	13	8
National Archives of Australia	13	1	8
Australian Federal Police	620	19	3
Office of the Prime Minister	36	1	3
Australian Criminal Intelligence Commission	48	1	2
Administrative Appeals Tribunal	1,244	1	1
Attorney-General's Department	184	1	1
Australian Postal Corporation	142	1	1
Australian Transaction Reports and Analysis Centre (AUSTRAC)	363	1	1
Department of Veterans' Affairs	1,712	2	1
Department of Infrastructure, Transport, Regional Development and Communications	160	1	1
Services Australia	2,362	2	1



**Table E.10: Decisions on amendment applications**

Decision	2019–20	% of total	2020–21	% of total	% change*
Applications granted: amend record	515	78	598	77	–1
Applications granted: annotate record	68	10	83	11	1
Applications granted: amend and annotate record	–	–	–	–	–
Applications refused	79	12	93	12	–
<b>Total decided</b>	<b>662</b>	<b>100</b>	<b>774</b>	<b>100</b>	<b>–</b>

\* Percentage increase or decrease over 2019–20.

as in 2019–20. As Home Affairs accounted for 92% of all amendment applications received, overall trends in amendment decision making are largely determined by decisions made by Home Affairs.

### Time taken to respond to amendment applications

An agency is required to notify an applicant of a decision on their application to amend personal records as soon as practicable, but in any case, not later than 30 days after the day the request is received, or a longer period as extended under the FOI Act.

In 2020–21, 90% of all amendment applications were decided within the applicable statutory timeframe, the same percentage as for 2019–20.

### Internal review of amendment decisions

In 2020–21, 19 applications for internal review of amendment decisions were made (12 more than in 2019–20, when 7 applications were made). Of these, 11 applications were made to Home Affairs, 6 to Defence and 2 to Services Australia. Twenty internal review decisions were made during the reporting period, compared to 6 in 2019–20. Of these, 6 decisions granted the requested amendment or annotation, and 14 decisions were made refusing the requested alteration. In 2019–20, the original decision was affirmed in one review and 5 were set aside.

### Charges

Section 29 of the FOI Act provides that an agency or minister may impose charges in respect of FOI requests, except requests for personal information, and sets out the process by which charges are assessed, notified and adjusted. There is no charge for giving access to an individual's own personal information. Charges can only be imposed for requests relating to 'other' information.

Table E.11 shows the amounts collected by the 20 agencies that collected the most in charges under the FOI Act in 2020–21. These top 20 agencies are responsible for 89% of all charges collected by agencies and ministers under the FOI Act during the reporting period.

In 2020–21, agencies notified a total of \$247,572 in charges with respect to 738 FOI requests, but collected only \$81,353 (33% of the total notified). This difference is due to agencies exercising their discretion under s 29 of the FOI Act not to impose the whole charge, or applicants withdrawing their FOI request and not paying the notified charge. Two agencies notified total charges of over \$20,000 – the Department of Agriculture, Water and the Environment (\$26,404 notified) and Health (\$48,453 notified).

Agencies notified and collected less in charges in 2020–21 than in 2019–20. Charges notified in 2020–21 were 7% less than in 2019–20, when

Table E.11: Top 20 agencies by charges collected in 2020–21

Agency	Requests received	Requests where charges notified	Total charges notified \$	Total charges collected \$
Department of Agriculture, Water and the Environment	248	108	26,404	14,517
Department of Health	633	126	48,453	13,092
Department of Industry, Science, Energy and Resources	306	53	12,899	10,225
Department of Education, Skills and Employment	219	51	15,162	5,131
Department of Infrastructure, Transport, Regional Development and Communications	220	22	8,124	3,592
Civil Aviation Safety Authority	130	20	4,000	2,792
Australian Securities and Investments Commission	281	8	4,421	2,626
National Indigenous Australians Agency	30	10	4,550	2,260
National Capital Authority	11	5	3,126	2,090
Department of the Treasury	196	17	5,745	2,048
Comcare	163	19	4,394	1,844
Australian Communications and Media Authority	25	5	2,677	1,675
Tertiary Education Quality and Standards Agency	10	4	2,585	1,522
Australian Competition and Consumer Commission	58	16	5,302	1,315
Australian Pesticides and Veterinary Medicines Authority	18	2	3,200	2,051
Department of Defence	564	25	1,768	1,170
Department of Foreign Affairs and Trade	277	48	2,693	1,147
Services Australia	5,484	59	11,843	1,099
Australian Maritime Safety Authority	92	1	1,000	1,000
Minister for Energy and Emissions Reduction	23	7	1,051	963
<b>Top 20</b>	<b>8,988</b>	<b>606</b>	<b>169,397</b>	<b>72,159</b>
Remaining agencies	25,804	132	78,175	9,194
<b>Total</b>	<b>34,792</b>	<b>738</b>	<b>247,572</b>	<b>81,353</b>

\$267,069 was notified. In 2020–21, agencies collected \$81,353, 8% less than in 2019–20 when \$88,090 was collected. Total charges notified and total charges collected have declined year on year since 2013–14, when \$734,762 was notified and \$239,628 was collected.

### Disclosure logs

All Australian Government agencies and ministers subject to the FOI Act are required to maintain an FOI disclosure log on a website. The disclosure log lists information that has been released to FOI applicants, subject to some exceptions (such as personal or business information). Information about agency and ministerial compliance with disclosure log requirements has been collected since 2012–13.

Australian Government agencies reported 2,480 new entries on disclosure logs during 2020–21, including documents available for download directly from the agency or minister's website in relation to 2,056 requests, documents available from another website in relation to 54 requests, and 370 entries in which the documents are available by another means (usually upon request).

The total number of new entries published on disclosure logs in 2020–21 is 27% higher than 2019–20, when 1,949 new entries were added. This increase is significant, given the overall reduction in the number of FOI requests.

There has also been an increase in the proportion of new documents which members of the public can access directly from agency websites: 83% in 2020–21 compared to 75% in 2019–20. As explained in the FOI Guidelines, publication of documents directly through the disclosure log, rather than providing a description of the documents and how they can be obtained on request from the agency or minister, is consistent with the FOI Act object of facilitating public access to government information.<sup>7</sup>

In 2020–21, agencies and ministers reported a total of 52,989 unique visits to disclosure logs and 610,187 page views, which represents an 30% increase in unique visits since 2019–20, and a 269% increase in total page views compared with 2019–20. This

increase is largely due to a large increase in page views reported by DITRDC, with 333,885 in 2020–21 compared to 17,139 in 2019–20. It should be noted that in some instances, abnormally high page views can be caused by non-human ('bot') traffic.

### Review of FOI decisions

Under the FOI Act, an applicant who is dissatisfied with the decision of an agency or minister on their initial FOI request has a number of avenues of review. The applicant can seek internal review with the agency or minister or external merits review by the Information Commissioner (IC review). Information Commissioner decisions under s 55K are reviewable by the AAT. AAT decisions may be appealed on a question of law to the Federal Court. In addition, an applicant can complain at any time to the Information Commissioner about an agency's actions under the FOI Act.

Third parties who have been consulted in the FOI process also have review rights if an agency or minister decides to release documents contrary to their submissions. Consultation requirements apply for state governments (s 26A), commercial organisations (s 27) and private individuals (s 27A).

### Internal review

Although there is no obligation to do so, the Information Commissioner recommends and encourages FOI applicants to apply for an internal review before applying for IC review.

In 2020–21, 1,026 applications were made for an internal review of FOI decisions, 9% more than in 2019–20 (when 942 internal review applications were made). In 2020–21, 4% of all FOI requests determined led to applications for internal review, similar to 2019–20 when it was 3%.

Of the 1,026 applications for an internal review, 494 (48%) were for review of decisions made in response to requests for personal information and 532 (52%) were for review of decisions on other information requests. On the basis that 77% of all FOI decisions in 2020–21 related to requests for access to personal information, this indicates that FOI applicants seeking access to personal information are less likely

<sup>7</sup> FOI Guidelines [14.32].

to seek internal review than those seeking to access 'other' (non-personal) information.

Agencies finalised 968 decisions on internal review in 2020–21, 9% more than in 2019–20 (890). Of these:

- 492 (51%) affirmed the original decision
- 135 (14%) set aside the original decision and granted access in full
- 261 (27%) granted access in part
- 7 (1%) granted access in another form
- 14 (1%) resulted in lesser access
- 40 (4%) were withdrawn by applicants without concession by the agency
- 19 (2%) reduced the charges levied.

### IC review applications

Table E.12 provides a breakdown by agency and minister of IC review applications received in 2020–21, where the agency or minister was the subject of more than one IC review. In total, there were 1,224 applications for IC review (up 15% from 1,066 in 2019–20).

In general, the agencies that receive the most FOI requests have the most IC review applications lodged against their decisions. In 2020–21, this applied to 16 of the top 20 agencies to receive FOI requests.

However, some agencies that do not receive large numbers of FOI requests are the subject of a comparatively large number of IC review applications given their case load. In 2020–21, the agencies with a large number of IC reviews lodged, expressed as a proportion of the total number of FOI requests received, include PM&C (15%), the Office of the Prime Minister (20%) and DFAT (14%).

There was a 23% increase in the number of IC reviews finalised by the Oaic in 2020–21 (1,018), compared with 2019–20 (when 829 were finalised).

In 2020–21, 964 IC reviews (95% of the total) were finalised without a formal decision being made

under s 55K of the FOI Act. This is a slightly higher percentage than in 2019–20 (94%) and 2018–19 (91%).

In 2020–21, 117 IC reviews were declined under s 54W(a) (lacking in substance, failure to cooperate, or lost contact) compared to 82 in 2019–20. There were 139 IC reviews declined under s 54W(b) (refer to AAT) compared with 83 in 2019–20. The total number of IC review applications declined under s 54W<sup>8</sup> of the FOI Act fell as a percentage of total IC reviews finalised: in 2020–21, 256 IC reviews were declined under s 54W (25% of the total) compared to 31% in 2019–20 and 30% in 2018–19.

Of the 1,018 IC review applications finalised, 6% were declined under s 54W(a)(i) (frivolous, vexatious, misconceived, lacking in substance, or not made in good faith), 5% were declined under s 54W(a)(ii) (failure to cooperate), 5% were finalised under s 54W(a)(iii) (lost contact) and 14% under s 54W(b) (allow to go direct to the AAT).

In 2020–21, the Information Commissioner made 54 decisions under s 55K of the FOI Act: 25 affirmed the decision under review (46%), 22 set aside the reviewable decision (41%) and 7 decisions were varied (13%). Of the 25 decisions that affirmed the decision under review, 24 (96%) were access refusals and one matter was an access grant. Of the 22 decisions set aside by the Information Commissioner, one decision related to an application for amendment under s 48 of the FOI Act. In 2019–20, the Information Commissioner affirmed 48% of decisions, set aside 38% and varied 14%.

Five of the decisions affirmed by the Information Commissioner (20%) had been revised by the agency or minister under s 55G of the FOI Act during the IC review, giving greater access to the documents sought. This was also the case with 8 of the 22 decisions the Information Commissioner set aside (36%) and 2 of the 7 decisions that were varied (28%).

The percentage of applications received by the Oaic which were out of jurisdiction or invalid increased from 19% in 2019–20 to 28% in 2020–21.

<sup>8</sup> Section 54W of the FOI Act contains a number of grounds under which the Information Commissioner may decide not to undertake an IC review or not to continue to undertake an IC review.

**Table E.12: Information Commissioner review – top 20 by review applications received**

Agency/minister	FOI requests received	Access grant decisions	Access refusal decisions	To be determined*	Total IC reviews	% of FOI requests
Department of Home Affairs	15,825	–	436	–	436	3
Services Australia	5,484	–	82	–	82	1
Australian Federal Police	754	–	75	–	75	10
Department of Health	633	3	54	–	57	9
Department of Foreign Affairs and Trade	277	–	39	–	39	14
Australian Taxation Office	905	–	28	–	28	3
Department of the Prime Minister and Cabinet	181	–	28	–	28	15
Department of Defence	564	–	28	–	28	5
Department of Veterans' Affairs	1,927	–	23	–	23	1
Department of Agriculture, Water and the Environment	248	3	19	–	22	9
Attorney-General's Department	221	–	22	–	22	10
National Disability Insurance Agency	910	–	21	–	21	2
Department of Industry, Science, Energy and Resources	310	–	17	–	17	5
Department of Education, Skills and Employment	219	2	14	–	16	7
Australian Securities and Investments Commission	281	1	15	–	16	6
Comcare	163	–	15	–	15	9
Commonwealth Ombudsman	134	–	14	–	14	10
Department of Infrastructure, Transport, Regional Development and Communications	220	–	13	–	13	6
Office of the Prime Minister of Australia	61	–	12	–	12	20
Office of the Australian Information Commissioner	193	2	7	1	10	5
<b>Subtotal</b>	<b>29,510</b>	<b>11</b>	<b>962</b>	<b>1</b>	<b>974</b>	<b>3</b>
Remaining agencies/ ministers	5,287	8	242	1	250	5
<b>Total</b>	<b>34,797</b>	<b>19</b>	<b>1,204</b>	<b>2</b>	<b>1,224</b>	<b>4</b>

\* Matter deregistered after 1 July 2021.

**Table E.13: Information Commissioner review outcomes**

Information Commissioner decisions	2019–20	% of 2019–20 total	2020–21	% of 2020–21 total
Section 54N – out of jurisdiction or invalid	161	19	285	28
Section 54R – withdrawn	180	22	266	26
Section 54R – withdrawn/conciliated	154	19	143	14
Section 54W(a)(i) – frivolous, vexatious, misconceived, lacking in substance, or not in good faith	90	11	61	6
Section 54W(a)(ii) – failure to cooperate	76	9	51	5
Section 54W(a)(iii) – lost contact	6	1	5	0*
Section 54W(b) – refer AAT	83	10	139	14
Section 54W(c) – failure to comply	–	–	–	–
Section 55F – set aside by agreement	12	1	1	0*
Section 55F – varied by agreement	17	2	13	1
Section 55F – affirmed by agreement	–	–	–	–
Section 55G – substituted	–	–	–	–
Section 55K – affirmed by Information Commissioner	24	3	25	3
Section 55K – set aside by Information Commissioner	19	2	22	2
Section 55K – varied by Information Commissioner	7	1	7	1
<b>Total</b>	<b>829</b>	<b>100</b>	<b>1,018</b>	<b>100</b>

\* Denotes a figure of less than 1%.

### Administrative Appeals Tribunal review

An application can be made to the AAT for review of the following FOI decisions:

- a decision of the Information Commissioner under s 55K
- an IC reviewable decision (that is, an original decision or an internal review decision), but only if the Information Commissioner decides, under s 54W(b), that the interests of the administration

of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT directly.

In 2020–21, 72 applications for review of FOI decisions were made to the AAT. This is a 38% increase from 2019–20, when 52 applications were made to the AAT.

Table E.14 provides a breakdown, by agency, of applications to the AAT in relation to FOI decisions in 2019–20. This data has been provided by the AAT.

**Table E.14: AAT review by agency (respondent)**

Respondent	Applications
Australian Securities and Investments Commission	12
Department of Home Affairs	10
Attorney General's Department	7
Australian Federal Police	4
Office of the Commonwealth Director of Public Prosecutions	4
Services Australia	4
Commonwealth Ombudsman	3
Office of the Australian Information Commissioner	3
Department of Agriculture, Water and the Environment	2
Department of the Prime Minister and Cabinet	2
Minister for Employment, Workforce, Skills, Small and Family Business	2
National Disability Insurance Agency	2
Department of the Treasury	2
Attorney General's Department	1
Australian Criminal Intelligence Commission	1
Australian Nuclear Science and Technology Organisation	1
Australian Taxation Office	1
Commonwealth Superannuation Corporation	1
Department of Defence	1
Department of Veterans' Affairs	1
Family Court of Australia	1
Minister for Energy and Emissions Reduction	1
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	1
Minister for the Environment	1
Sport Integrity Australia	1
Other (appeals by agencies against IC review decisions)	3
<b>Total</b>	<b>72</b>

In 2020–21, 2 agencies sought review in the AAT of decisions made by the Information Commissioner under s 55K of the FOI Act – Services Australia (1 application) and Defence (2).

At the end of 2020–21, 103 applications remained outstanding with the AAT. This is an 81% increase on the number of applications outstanding at the end of 2019–20 (57).

Table E.15 shows the outcome of the 46 FOI reviews finalised by the AAT in 2020–21. The AAT provided this data.

Of the 46 FOI reviews finalised by the AAT, 9 (20%) resulted in published decisions in 2020–21. The AAT affirmed the Information Commissioner's decision in 3 of those 9 published decisions, while 34 reviews (74%) were withdrawn or dismissed.

Six of the 46 reviews finalised by the AAT in 2020–21 involved applications made by agencies following decisions made by the Information Commissioner under s 55K of the FOI Act. Three applications were varied or set aside (by decision), and one was varied or set aside by consent.

### Federal Court

In 2020–21 there were 2 matters that were the subject of judicial review. The first matter related to decisions made under s 54W(a) to decline to undertake an IC review. The second related to claimed delay in processing an IC review decision. Both applications were dismissed by the Federal Court.

**Table E.15: Outcomes of FOI reviews finalised by the AAT**

AAT outcomes	Number in 2019–20	% of total 2019–20	Number in 2020–21	% of total 2020–21
Affirmed by consent	–	–	–	–
Varied/set aside/remitted by consent	2	7	3	7
Dismissed by consent	–	–	2	4
Withdrawn by applicant	4	13	21	46
Decision affirmed	9	30	3	7
Decision varied/set aside	3	10	6	13
Dismissed by AAT – frivolous or vexatious/fail to comply with direction	2	7	–	–
Dismissed – no application fee paid	–	–	–	–
Dismissed – non-reviewable decision	10	33	11	24
<b>Total</b>	<b>30</b>	<b>100</b>	<b>46</b>	<b>101</b>

### Note

Figures may not add to 100% due to rounding.



## Impact of FOI on agency resources

To assess the impact on agency resources of their compliance with the FOI Act, agencies are asked to estimate the hours staff spent on FOI matters and the non-labour costs directly attributable to FOI, such as legal and specific FOI training costs. Agencies submit these estimates annually. Agency estimates may also include FOI processing work undertaken on behalf of a minister's office.

Agencies are also asked to report their costs of compliance with the IPS. To facilitate comparison with information in previous annual reports, IPS costs are not included in this analysis of the cost of agency compliance with the FOI Act, but are discussed separately below.

The total reported cost attributable to processing FOI requests in 2020–21 was \$61.48 million, a 4% decrease over the previous financial year's total of \$63.9 million. This is different to trends in previous years where there have been increases in costs. In 2019–20, there was a 7% increase over the previous financial year's total of \$59.9 million.

The reason for the decrease in the overall cost of FOI activity is a 4% decrease in the total staff hours devoted to FOI in 2020–21 and an 11% decrease in requests determined compared with 2019–20. The total number of staff hours in 2019–20 was 893,564, decreasing to 855,498 hours in 2020–21. Total requests determined fell from 29,358 in 2019–20 to 26,680 in 2020–21.

Despite this, the average cost of each FOI request determined during this reporting period rose to \$2,305 (up 8% from \$2,177 in 2019–20) as agencies spent longer on processing each request. The overall average number of staff days to process an FOI request in 2020–21 was 3.3 days, which was higher than the average of 2.9 days the previous financial year.

Table E.16 sets out the average cost per FOI request determined (granted in full, in part or refused) compared to the last two financial years.

**Table E.16: Average cost per request determined**

	Requests determined	Total cost \$	Average cost per request determined \$
2020–21	26,680	61,484,795	2,305
2019–20	29,358	63,906,111	2,177
2018–19	30,144	59,844,953	1,985
2017–18	31,674	52,186,179	1,648

### Staff costs (FOI)

All agencies are asked to supply information about staff resources allocated to FOI.

**Table E.17: Total FOI staffing across all Australian Government agencies**

Staffing	2018–19	2019–20	2020–21	% change*
Total staff hours	840,803	893,564	855,498	–4
Total staff years	420.4	446.8	427.75	–4

\* Percentage change from 2020–21 to 2019–20.

Agencies provide estimates of the number of staff hours spent on FOI to enable the calculation of salary costs (and additional 60% related costs, which cover overheads such as computers, electricity and stationery) directly attributable to FOI request processing

A summary of staff costs is provided in Table E.18, based on information provided by agencies and ministers and calculated using the following median base annual salaries from Australian Public Service Commission public information:<sup>9</sup>

<sup>9</sup> Because salary levels differ between agencies, median salary levels have been used. These were published by the Australian Public Service Commission in its APS Remuneration Report 2020. These median levels are as at 31 December 2020.

**Table E.18: Estimated staff costs of FOI compared to last financial year**

Type of staff	Staff years 2019–20	Total staff costs 2019–20 \$	Staff years 2020–21	Total staff costs 2020–21 \$	Total staff costs % change
FOI contact officers	326.5	41,202,750	318.4	40,616,061	–1
SES	16.5	5,353,577	13.7	4,453,306	–17
APS Level 6 and EL 1–2	53.2	9,780,761	43.3	8,018,880	–18
APS Levels 1–5	47.5	4,923,532	50.9	5,315,641	8
Minister and advisers	1.1	256,145	1.0	225,714	–12
Minister's support staff	2.0	210,519	0.5	47,621	–77
<b>Total</b>	<b>446.8</b>	<b>61,727,284</b>	<b>427.8</b>	<b>58,677,223</b>	<b>–5</b>

- FOI contact officer (officers whose duties included FOI work) \$79,725<sup>10</sup>
- other officers involved in processing requests:
  - Senior Executive Service (SES) officers (or equivalent) \$202,910<sup>11</sup>
  - APS Level 6 and Executive Levels (EL) 1–2 \$115,762<sup>12</sup>
  - Australian Public Service (APS) Levels 1–5 \$65,270<sup>13</sup>
- Minister's office:
  - Minister and advisers \$144,837<sup>14</sup>
  - Minister's support staff \$65,270.<sup>15</sup>

Total estimated staff costs in 2020–21 were \$58.7 million, 5% less than the previous financial year. In 2019–20, total estimated staff costs rose by 8% over the previous financial year, while in 2018–19, they rose by 15% over the previous financial year. The decreasing staff costs in 2020–21

were partly attributable to a 77% decrease in staff costs for Ministers' support staff.

#### Non-labour costs

Non-labour costs directly attributable to FOI are summarised in Table E.19, including the percentage change from the previous financial year. The total non-labour costs in 2020–21 were \$2.8 million, a 29% increase compared with the previous financial year (\$2.2 million).

The most significant increases in non-labour costs in 2020–21 were in relation to litigation costs, total legal costs, training and 'other' costs.

The higher litigation costs are primarily for the High Court of Australia (\$256,180, up from nil in 2019–20), Commonwealth Ombudsman (\$89,780, up from nil in 2019–20), the Australian Securities and Investment Commission (\$57,106, up from \$5,853), and PM&C (\$104,797, up from \$76,253). The High Court and the PM&C have advised their high litigation costs related to complex AAT matters.

<sup>10</sup> APS Level 5 base salary median.

<sup>11</sup> SES Band 1 base salary median.

<sup>12</sup> Executive Level 1 base salary median.

<sup>13</sup> APS Level 3 base salary median.

<sup>14</sup> Executive Level 2 base salary median.

<sup>15</sup> APS Level 3 base salary median.

The other agencies did not provide an explanation in their annual returns as to how these costs were incurred or why these costs were much higher than in 2019–20. However, it is apparent from the data provided by the AAT (Table E.14) that these agencies' costs were partly due to new applications relating to FOI decisions in 2020–21.

Training costs reflect training provided to new FOI staff as well as ongoing training for existing staff. Training costs were 64% higher than in 2019–20, which may be the result of agencies taking advantage of virtual FOI training opportunities and an increase in training following a substantial decline in 2019–20 (when training costs decreased by 56%).

There was also a 16% increase in non-labour costs in 2020–21 in relation to general legal advice costs. Some agencies reported engaging external legal advice for complex matters.

As can be seen from Table E.19, there was a 31% decrease in 'other' general administrative costs, such as printing and postage. This may reflect a general decline in the number of people requiring documents to be printed and sent to them, increased efficiencies in the use of digital technology, and the greater use of digital

communication due to movement restrictions imposed by the COVID-19 pandemic.

#### Average cost per FOI request

As stated above, the overall average number of staff days to process an FOI request in 2020–21 was 3.3 days, which was higher than the average of 2.9 days in 2019–20. As in previous years, the average staff days per FOI request differed significantly across agencies, from 0.3 days (Commonwealth Superannuation Corporation) to 19 days (Defence).

The average cost per request received also differed significantly across agencies, from \$64 to \$67,292. The overall average cost per request received was \$1,766, a 14% increase on the previous financial year's average of \$1,546.

As a general rule, the agencies with the highest average cost per request are small agencies that do not receive many FOI requests. As a result, they do not have the opportunity to develop the processing efficiencies that agencies with higher volumes of FOI requests do.

However, Defence (which received 564 FOI requests) had a high average cost per request, attributable in part to its high average staff days of 19 days per request.

**Table E.19: Identified non-labour costs of FOI**

Costs	2018–19 \$	2019–20 \$	2020–21 \$	% change*
General legal advice costs	1,517,125	719,718	834,454	16
Litigation costs	414,635	911,551	1,254,301	38
<b>Sub-total (legal costs)</b>	<b>1,931,760</b>	<b>1,631,269</b>	<b>2,088,755</b>	<b>28</b>
General administrative costs	144,140	136,634	94,678	–31
Training	385,745	168,339	276,042	64
Other	263,206	242,585	348,097	43
<b>Total</b>	<b>2,724,851</b>	<b>2,178,827</b>	<b>2,807,572</b>	<b>29</b>

\* Percentage change from 2020–21 to 2019–20.

**Table E.20: Agencies with average cost per FOI request greater than \$10,000**

Agency	Requests received	Average cost per request \$
High Court of Australia	4	67,292
Professional Services Review	4	26,751
Australian Institute of Health and Welfare	4	23,921
Australian Building and Construction Commission	9	18,174
Indigenous Business Australia	4	17,705
Australian Institute of Marine Science	1	14,744
Northern Australia Infrastructure Facility	2	13,256
Department of Defence	564	11,484
Australian National Maritime Museum	2	11,425
Cancer Australia	7	11,122
Australian Transport Safety Bureau	22	10,115
National Skills Commission	1	10,505

## Impact of the Information Publication Scheme on agency resources

Agencies are required to provide information about the costs of meeting their obligations under the IPS.

The total reported cost attributable to compliance with the IPS in 2020–21 was \$990,278, 20% less than in 2019–20 (\$1,242,976).

### Staff costs (IPS)

Table E.21 shows the total reported IPS staffing across Australian Government agencies compared to last year.

### Non-labour IPS costs

Reported IPS non-labour costs for all agencies totalled \$3,973 in 2020–21, a 136% increase when compared with 2019–20, when it was \$1,680. Only 3 agencies (of the more than 250 agencies required to maintain an IPS entry) reported any expenditure on IPS during 2020–21.

Two agencies reported a total of \$165 on general administrative costs, one agency reported spending \$2,048 on general legal advice associated with its IPS, and one agency reported spending \$1,760 on IPS training. No agencies reported expenditure on IPS litigation or 'other' IPS expenses.

**Table E.21: Total IPS staffing**

Staffing	2019–20	2020–21	% change
Staff numbers: 75–100% time on IPS matters	8	5	–38
Staff numbers: less than 75% time on IPS matters	295	223	–24
Total staff hours	19,084	14,879	–22
Total staff years	9.5	7.4	–22

**Table E.22: Estimated staff costs in relation to the IPS in 2020–21**

Type of staff*	Staff years	Salary costs \$	General administrative costs \$	Total staff costs \$
IPS contact officers	6.8	350,586	525,879	876,465
SES	0.1	12,207	18,311	30,518
APS Level 6 and EL 1–2	0.4	27,301	40,952	68,253
APS Levels 1–5	0.1	4,428	6,642	11,070
<b>Total</b>	<b>7.4</b>	<b>394,522</b>	<b>591,784</b>	<b>986,306</b>

\* IPS contact officers are officers whose usual duties include IPS work. The other rows cover other officers involved in IPS work.

## Appendix F

### Acronyms and shortened forms

Acronym or abbreviation	Expanded term
AAO	Administrative Arrangements Order
AASB	Australian Accounting Standards Board
AAT	Administrative Appeals Tribunal
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
AHRC	Australian Human Rights Commission
AIAC	Association of Information Access Commissioners
AIC Act	<i>Australian Information Commissioner Act 2010</i>
AICmr	Australian Information Commissioner database published on AustLII
APP	Australian Privacy Principle
APPA	Asia Pacific Privacy Authorities
APS	Australian Public Service
ATO	Australian Taxation Office
AustLII	Australasian Legal Information Institute
CDR	Consumer Data Right
CII	Commissioner-initiated investigation
CPEA	APEC Cross-border Privacy Enforcement Arrangement
CSS	Commonwealth Superannuation Scheme
Data-matching Act	<i>Data-matching Program (Assistance and Tax) Act 1990</i>
Defence	Department of Defence
DFAT	Department of Foreign Affairs and Trade
DHS	Department of Human Services
DISER	Department of Industry, Science, Energy and Resources
DITRDC	Department of Infrastructure, Transport, Regional Development and Communications

Acronym or abbreviation	Expanded term
EDR scheme	External Dispute Resolution scheme
EOT	extension of time
EU	European Union
FCA	Federal Court of Australia
FCC	Federal Circuit Court
FFR	Public Governance, Performance and Accountability (Financial Reporting) Rule 2015
FOI	freedom of information
FOI Act	<i>Freedom of Information Act 1982</i>
FTE	full-time equivalent
GCBECA	Global Cross Border Enforcement Cooperation Arrangement
GPA	Global Privacy Assembly
GPEN	Global Privacy Enforcement Network
GST	Goods and Services Tax
HI Service	Healthcare Identifiers Service
Home Affairs	Department of Home Affairs
HSWC	Health, Safety and Wellbeing Committee
IC	Information Commissioner
ICIC	International Conference of Information Commissioners
ICO	UK Information Commissioner's Office
ICON	Information Contact Officers Network
IEWG	International Enforcement Working Group
Information Commissioner	Australian Information Commissioner, within the meaning of the <i>Australian Information Commissioner Act 2010</i>
IPS	Information Publication Scheme
KMP	key management personnel
MOU	Memorandum of understanding
MP	member of parliament
NDB scheme	Notifiable Data Breaches scheme
NDIA	National Disability Insurance Agency

Acronym or abbreviation	Expanded term
NFBMC	National Facial Biometric Matching Capability
OAIC	Office of the Australian Information Commissioner
OCF	OAIC Consultation Forum
PAA	Privacy Authorities Australia
PAW	Privacy Awareness Week
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	Public Governance, Performance and Accountability Rule 2014
PIA	privacy impact assessment
PIPC	Personal Information Protection Commission of the Republic of Korea
PM&C	Prime Minister and Cabinet
PNR	passenger name record
PPN	Privacy Professionals Network
Privacy Act	<i>Privacy Act 1988</i>
PSS	Public Sector Superannuation Scheme
PSSap	PSS accumulation plan
RAC	Regulatory Action Committee
SES	Senior Executive Service
TAP	Talking about performance
TFN	tax file number
TIYDL	This Is Your Digital Life
TPP	Territory Privacy Principle
Veterans' Affairs	Department of Veterans' Affairs
WHS	work health and safety



## Appendix G

### Correction of material errors

The errors to be corrected in the *Office of the Australian Information Commissioner Annual Report 2019–20* are listed below.

1. On page 10, at paragraph 4, the number '828' is replaced by '829'.
2. On page 10, at paragraph 5, the percentage '71%' is replaced by '72%'.
3. On page 15, IC reviews graphic where the number of IC reviews is provided, the figure '828' is replaced with '829'. The figure '71%' is replaced with '72%'.
4. On page 86, under Advertising and market research, the words 'More information on the survey is available on the OAIC website' are replaced with 'Further information on the advertising campaign and survey is available at [oaic.gov.au](http://oaic.gov.au)'.
5. On page 146, in the second column at paragraph 4, the percentage '71%' is replaced by '72%'.
6. On page 146, in the second column at paragraph 4, the number '2,713' (being the number of practical refusal notices issued by the Department of Home Affairs) is replaced by '2,728'.
7. On page 146, in the second column at paragraph 4, '15%' is replaced by '16%'.
8. On page 146, in the second column at paragraph 5, '88%' is replaced by '56%' and the sentence that commences 'This increase in subsequent refusals or withdrawals ...' is deleted.

9. The data in Table E.7 on page 147 is replaced as follows:

**Table E.7: Use of practical refusal in 2019–20**

Practical refusal processing step	Personal	Other	Total
Notified in writing of intention to refuse request	3,081	737	3,818
Request was subsequently refused or withdrawn	1,664	460	2,124
Request was subsequently processed	1,417	277	1,694

10. On page 147, adjacent to Table E.7, in the second column, paragraph 1 is deleted.
11. On page 147, adjacent to Table E.7, in the second column at paragraph 2, the number '2,713' is replaced by '2,728', the phrase 'only 6' is replaced by '1,259' and '1%' replaced by '46%'. The sentence beginning 'The low rate of FOI requests ...' is replaced by 'The lower rate of FOI request ...' and the word 'particularly' is deleted.
12. On page 148, in the second column at paragraph 3, 'the Australian Sports Commission' is deleted.

## Appendix H

### List of requirements

PGPA Rule reference	Description	Requirement	Part of report
<b>17AD(g)</b>	<b>Letter of transmittal</b>		
17AI	A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with s 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	1
<b>17AD(h)</b>	<b>Aids to access</b>		
17AJ(a)	Table of contents.	Mandatory	2
17AJ(b)	Alphabetical index.	Mandatory	167
17AJ(c)	Glossary of abbreviations and acronyms.	Mandatory	156
17AJ(d)	List of requirements.	Mandatory	160
17AJ(e)	Details of contact officer.	Mandatory	Copyright page
17AJ(f)	Entity's website address.	Mandatory	Copyright page
17AJ(g)	Electronic address of report.	Mandatory	Copyright page
<b>17AD(a)</b>	<b>Review by accountable authority</b>		
17AD(a)	A review by the accountable authority of the entity.	Mandatory	8–9
<b>17AD(b)</b>	<b>Overview of the entity</b>		
17AE(1)(a)(i)	A description of the role and functions of the entity.	Mandatory	6
17AE(1)(a)(ii)	A description of the organisational structure of the entity.	Mandatory	14–16
17AE(1)(a)(iii)	A description of the outcomes and programmes administered by the entity.	Mandatory	6
17AE(1)(a)(iv)	A description of the purposes of the entity as included in corporate plan.	Mandatory	7
17AE(1)(aa)(i)	Name of the accountable authority or each member of the accountable authority.	Mandatory	14

PGPA Rule reference	Description	Requirement	Part of report
17AE(1)(aa)(ii)	Position of the accountable authority or each member of the accountable authority.	Mandatory	14
17AE(1)(aa)(iii)	Period as the accountable authority or member of the accountable authority within the reporting period.	Mandatory	14
17AE(1)(b)	An outline of the structure of the portfolio of the entity.	Portfolio departments – mandatory	14–15 70
17AE(2)	Where the outcomes and programs administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change.	If applicable, mandatory	N/A
<b>17AD(c)</b>	<b>Report on the performance of the entity</b>		
	<i>Annual performance statement</i>		
17AD(c)(i); 16F	Annual performance statement in accordance with para 39(1)(b) of the Act and s 16F of the Rule.	Mandatory	17–67
17AD(c)(ii)	<i>Report on financial performance</i>		
17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory	81–117
17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	120–121
17AF(2)	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	If applicable, mandatory	81–117 120–121
<b>17AD(d)</b>	<b>Management and accountability</b>		
	<i>Corporate governance</i>		
17AG(2)(a)	Information on compliance with s 10 (fraud systems).	Mandatory	71
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	1
17AG(2)(b)(ii)	A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place.	Mandatory	1

PGPA Rule reference	Description	Requirement	Part of report
17AG(2)(b)(iii)	A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity.	Mandatory	1
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	70
17AG(2)(d) – (e)	A statement of significant issues reported to Minister under para 19(1)(e) of the Act that relates to non-compliance with Finance law and action taken to remedy non-compliance.	If applicable, mandatory	N/A
<i>Audit Committee</i>			
17AG(2A)(a)	A direct electronic address of the charter determining the functions of the entity's audit committee.	Mandatory	71
17AG(2A)(b)	The name of each member of the entity's audit committee.	Mandatory	72
17AG(2A)(c)	The qualifications, knowledge, skills or experience of each member of the entity's audit committee.	Mandatory	72
17AG(2A)(d)	Information about the attendance of each member of the entity's audit committee at committee meetings.	Mandatory	72
17AG(2A)(e)	The remuneration of each member of the entity's audit committee.	Mandatory	72
<i>External scrutiny</i>			
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	N/A
17AG(3)(a)	Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity.	If applicable, mandatory	N/A
17AG(3)(b)	Information on any reports on operations of the entity by the Auditor-General (other than report under s 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, mandatory	N/A
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, mandatory	N/A
<i>Management of human resources</i>			
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	73–76

PGPA Rule reference	Description	Requirement	Part of report
17AG(4)(aa)	Statistics on the entity's employees on an ongoing and non-ongoing basis, including the following: (a) statistics on full-time employees (b) statistics on part-time employees (c) statistics on gender (d) statistics on staff location.	Mandatory	74
17AG(4)(b)	Statistics on the entity's APS employees on an ongoing and non-ongoing basis; including the following: • statistics on staffing classification level • statistics on full-time employees • statistics on part-time employees • statistics on gender • statistics on staff location • statistics on employees who identify as Indigenous.	Mandatory	74
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subs 24(1) of the <i>Public Service Act 1999</i> .	Mandatory	75
17AG(4)(c)(i)	Information on the number of SES and non-SES employees covered by agreements etc identified in para 17AG(4)(c).	Mandatory	75
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	74
17AG(4)(c)(iii)	A description of non-salary benefits provided to employees.	Mandatory	76
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	If applicable, mandatory	N/A
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, mandatory	N/A
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, mandatory	N/A
17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, mandatory	N/A

PGPA Rule reference	Description	Requirement	Part of report
<i>Assets management</i>			
17AG(5)	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities.	If applicable, mandatory	N/A
<i>Purchasing</i>			
17AG(6)	An assessment of entity performance against the <i>Commonwealth Procurement Rules</i> .	Mandatory	77
<i>Reportable consultancy contracts</i>			
17AG(7)(a)	A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	77
17AG(7)(b)	A statement that <p>"During [reporting period], [specified number] new reportable consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing reportable consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]"</p>	Mandatory	77
17AG(7)(c)	A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged.	Mandatory	77
17AG(7)(d)	A statement that <p>"Annual reports contain information about actual expenditure on reportable consultancy contracts. Information on the value of reportable consultancy contracts is available on the AusTender website."</p>	Mandatory	77
<i>Reportable non-consultancy contracts</i>			
17AG(7A)(a)	A summary statement detailing the number of new reportable non-consultancy contracts entered into during the period; the total actual expenditure on such contracts (inclusive of GST); the number of ongoing reportable non-consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting period on those ongoing contracts (inclusive of GST).	Mandatory	77

PGPA Rule reference	Description	Requirement	Part of report
17AG(7A)(b)	A statement that <i>“Annual reports contain information about actual expenditure on reportable non-consultancy contracts. Information on the value of reportable non-consultancy contracts is available on the AusTender website.”</i>	Mandatory	77
17AD(daa)	<i>Additional information about organisations receiving amounts under reportable consultancy contracts or reportable non-consultancy contracts</i>		
17AGA	Additional information, in accordance with s 17AGA, about organisations receiving amounts under reportable consultancy contracts or reportable non-consultancy contracts.  <i>Australian National Audit Office access clauses</i>	Mandatory	77
17AG(8)	If an entity entered into a contract with a value of more than \$100,000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor’s premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.  <i>Exempt contracts</i>	If applicable, mandatory	N/A
17AG(9)	If an entity entered into a contract or there is a standing offer with a value greater than \$10,000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.  <i>Small business</i>	If applicable, mandatory	N/A
17AG(10)(a)	A statement that <i>“[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance’s website.”</i>	Mandatory	77
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	77
17AG(10)(c)	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that <i>“[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.”</i>	If applicable, mandatory	77

PGPA Rule reference	Description	Requirement	Part of report
17AD(e)	Inclusion of the annual financial statements in accordance with subs 43(4) of the Act.	Mandatory	81–117
	<i>Executive remuneration</i>		
17AD(da)	Information about executive remuneration in accordance with Subdivision C of Division 3A of Part 2-3 of the Rule.	Mandatory	122–123
17AD(f)	<i>Other mandatory information</i>		
17AH(1)(a)(i)	If the entity conducted advertising campaigns, a statement that <i>“During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity’s website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance’s website.”</i>	If applicable, mandatory	79
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, mandatory	N/A
17AH(1)(b)	A statement that <i>“Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity’s website].”</i>	If applicable, mandatory	N/A
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	79
17AH(1)(d)	Website reference to where the entity’s Information Publication Scheme statement pursuant to Part II of FOI Act can be found.	Mandatory	79
17AH(1)(e)	Correction of material errors in previous annual report.	If applicable, mandatory	159
17AH(2)	Information required by other legislation.	Mandatory	126–155



# Index

- abbreviations 156–8
- Aboriginal and Torres Strait Islanders, number of employees 73
- Access Canberra 60
- acronyms 156–8
- Administrative Arrangements Orders 130
- Administrative Appeals Tribunal reviews 148–50
- advertising expenses 79
- advice to governments
  - as regulatory activity 7
  - during COVID-19 pandemic 51
  - on international data flows 23
  - privacy law reform 29
  - to promote best practice 24–5
- agencies involved in IC reviews 13
- agency resource statement 120
- AI Facial Recognition Technology subgroup (GPA) 27
- APEC Cross-border Privacy Enforcement Arrangement (CPEA) 24
- Asia Pacific Privacy Authorities 23, 27, 64
- Association of Information Access Commissioners 54, 65
- Attorney-General's Department
  - engagement with 25
  - review of Privacy Act 8
- Audit Committee 72
- Australian Capital Territory, services provided to 31, 60, 124
- Australian Community Attitudes to Privacy Survey 2020 48
- Australian Competition and Consumer Commission 9, 30, 50
- Australian Digital Health Agency, services provided to 124
- Australian Government, privacy complaints about 34
- Australian Government Privacy Officer training 49
- Australian Human Rights Commission, services provided by 71, 125
- Australian Information Commissioner *see* Falk, Angelene
- Australian Information Commissioner Act 2010* 70
- Australian Privacy Principles *see also* privacy complaints
  - alleged breaches investigated 8, 34–5
  - compliance assessments 59
  - enquiries about 31–2
  - privacy complaints and 126
- awareness of privacy, promoting 46–50
- case studies
  - Clearview AI Inc investigation 24
  - COVIDSafe Assessment Program 53
  - Department of Home Affairs 41
  - Flight Centre Travel Group 39
  - FOI enquiry 33
  - My Health Record system 61
  - privacy enquiries 32
  - ransomware attack 37
  - social engineering 37
- Cash, Michaelia
  - as responsible minister 70
  - letter of transmittal 1
- Chamonix mobile application 61
- Clearview AI Inc., investigation into 8, 19, 24
- code of practice for digital platforms 28
- Commissioner-initiated investigations 8, 18–19, 38–42
- Commissioner's review 8–9
- Commonwealth Integrity Commission 29
- compensation for privacy breaches 35, 127
- Competition and Consumer Act 2010* 29, 50, 60
- complaints *see* privacy complaints
- conciliation of privacy complaints 35, 127
- consultants 77–8
- Consumer Data Right
  - assessments of 60–1
  - awareness of 50
  - implementation of 63
  - in banking sector 9
  - planned expansion 29
  - Privacy Safeguard Guidelines 50

- Cooper, Bruce 15
- Corporate branch 15
- corporate governance 70–9
- Corporate Plan
  - indicators by status 20–2
  - performance against 18
- corporate services 71
- corporate structure 15
- correction of material errors 159
- COVID app data, 51–53, 128
- COVID-19 pandemic
  - effect on FOI response times 140
  - National COVID-19 Privacy Team 19
  - OAIC response to 8–9, 51–2
  - privacy impact assessments 19
  - vaccination program 26
- COVIDSafe Assessment Program
  - compliance assessments 59–60, 128
  - number of assessments 19
  - outcomes published 51–3
  - reports on 9
- credit reporting enquiries 31, 32
- cross-jurisdictional issues 51
- cyber security 28
  
- Data Availability and Transparency Bill 2020 25, 29–30
- data breach notifications *see* Notifiable Data Breaches scheme
- data matching functions 62, 129
- Data-matching Program (Assistance and Tax) Act 1990* 62
- Data-matching Program (Assistance and Tax)
  - Guidelines 1994 19, 25
- Data Protection Commissioner of Ireland 24, 64
- Data Store Administrator 51
- Department of Foreign Affairs and Trade, advice on
  - free trade agreements 23
- Department of Health 25, 26, 30, 51, 53
- Department of Home Affairs
  - advice to 25
  - Commissioner-initiated investigations 18–19, 41–2
  - determination 35
  - FOI request handling 8, 56, 131–2, 140
  - passenger name record data 60, 125
  - provision of privacy assessments 125
  
- Department of the Prime Minister and Cabinet 132
- Department of Veterans' Affairs 56, 62, 131–2
- determinations 35
- Digital Citizens and Consumers Working Group (GPA) 19, 26–7
- digital health assessments 60–1, 124, 129
- see also* My Health Record system
- Digital Identity system 19, 25, 26, 30
- disability, employees with 73, 79
- disclosure logs 57, 145
- Dispute Resolution branch 14
- Drayton, Melanie 15
  
- e-learning programs 47
- ecologically sustainable development 79
- employees *see* staffing
- enabling legislation 70
- enhanced welfare payment integrity *see* data matching functions
- environmental performance 79
- errors in previous Annual Report 159
- European Union, passenger name record data 60, 125
- events, participation in 49
- Executive Committee (GPA) 26
- executive team 70
- exemptions in FOI decisions 138
- extension of time for FOI reviews 45–6
- external dispute resolution 35, 127
- external scrutiny 72
  
- Facebook
  - joint investigation into 39–40
  - OAIC use of 47
- facial recognition technology 27, 125
- Fair Work Ombudsman 62
- Falk, Angelene
  - as Information Commissioner 14, 122
  - Commissioner's review 8–9
  - letter of transmittal 1
  - performance statement 18
  - presentation by 46
  - role in GPA 26, 64
- Federal Court, judicial reviews by 150
- female employees 73

finance industry, privacy complaints about 34

financial statements 79–117

Flight Centre Travel Group 39

FOI Essentials toolkit 55

FOI Regulatory Group 14–15

fraud control 71

Freedom of Information

charges for FOI responses 143–5

exemptions in FOI decisions 138

*Freedom of Information Act 1982* 70

Freedom of Information (FOI)

bill scrutiny comments 29

complaint handling 42–6

enquiries about 33

extension of time for reviews 45–6

Home Affairs investigation 41–2

impact on agency resources 151–5

internal reviews 145–6

merits reviews 42–6

new Commissioner 9

number of complaints 13

number of enquiries 13

number of requests by agency 133–7

practical refusal of requests 139

regulatory action policy 58–9

statistics 56, 130

time taken to respond 140–2

time to finalise complaints 13

updated guidelines 55

Global Privacy Assembly (GPA)

conference 8, 23, 64

liaison with 19, 23–4, 26

Global Privacy Enforcement Network (GPEN) 24, 27

government-held information, proactive release of 54–7

grant programs 79

*Guide to privacy for data holders* 50

*Guide to securing personal information* 28

Hampton, Elizabeth 15, 46, 122

Health Official Portal 53

Health, Safety and Wellbeing Committee 76

health service providers, privacy complaints about 34

Healthcare Identifiers Service 124

Holt, Rachel 72

Housing ACT 60

indicators by status 18, 20–2

industry sectors, privacy complaints by 10, 34

information access enquiries *see* privacy and information access enquiries

information access rights 57

Information Commissioner reviews *see also*

Freedom of Information

applications for 9

numbers of 13, 18

statistics 146–8

time to finalise 13

Information Contact Officers Network 19, 54, 64

Information Matters newsletter 47, 50, 54

Information Publication Scheme 57, 79, 154–5

International Access to Information Day 8, 46, 54, 64

International Conference of Information

Commissioners 8, 19, 64–5

International Enforcement Working Group (GPA) 23, 27

international privacy regulation, OAIC's role in 26–7

law reform, advice to government 29–30

learning and development initiatives 75

letter of transmittal 1

list of requirements 160–6

'Make Privacy a Priority' hashtag 47

market research expenses 79

media enquiries responded to 49

memorandums of understanding 79, 124–5

merits reviews 42–3

My Health Record system

assessments 60–1, 129

data breach notifications 36

monitoring of 124

*My Health Records Act 2012*

review of 25, 30

National Action Plan 57

National COVID-19 Privacy Team 19, 26, 63

- National COVIDSafe Data Store Access Controls 19
- National Data Store 51
- National Disability Insurance Agency 132
- National Facial Biometric Matching Capability 125
- National Health (Privacy) Rules 2018 19, 25
- non-English speaking background employees 73
- Notifiable Data Breaches scheme
  - enquiries about 31–2
  - number of notifications 11
  - operation of 36–7
  - purpose of 9
  - time to finalise notifications 11
- OECD Recommendation on Cross-border Cooperation in the Enforcement of Laws Protecting Privacy 27
- Office of the Australian Information Commissioner
  - 10th anniversary 9
  - collaboration with counterparts 63–5
  - Consultation Forum 76
  - corporate structure 15
  - employee engagement 65
  - overview 6–15
  - reporting capability 66
- Office of the Victorian Information Commissioner 27, 57
- Online Privacy Code 26, 28
  - online privacy protections 19, 25–6, 28–9
- Online Safety Bill 25, 30
- ‘Open by Design’ commitment 57
- Open Government Partnership 57
- organisational structure 14–15
- outcomes
  - overview 6
  - resources for 120–1
- Parliamentary Joint Committee on Intelligence and Security inquiry 29–30
- part-time employees 73
- passenger name record data 60, 125
- People and Culture 73–6 *see also* staffing
- performance statement 17–68
- Personal Data Protection Commission (Singapore) 24, 64
- personal information
  - applications to amend 141, 143
  - FOI requests for 132
  - protection of 23–4
- Personal Information Protection Commission (Korea) 27, 64
- phone enquiries, numbers of 31–2
- Positivity Institute 75
- practical refusal of FOI requests 139
- privacy
  - promoting awareness of 46–50
  - regulatory action policy 58
- Privacy Act 1988*
  - compliance assessments 59
  - review of 8, 19, 24–6
- Privacy Amendment (Public Health Contact Information) Act 2020* 51
- privacy and information access enquiries
  - by phone 31
  - numbers dealt with 11
  - responses to 31–3
- privacy assessments 128 *see also* Consumer Data Right; COVIDSafe Assessment Program
- Privacy Authorities Australia 63
- Privacy Awareness Week
  - number of supporters 11, 19
  - success of 8, 47
- Privacy Commissioner *see* Falk, Angelene
- privacy complaints *see also* Australian Privacy Principles
  - alleged breaches of APPs 8, 34–5
  - numbers of 9–10, 19
  - resolution of 34–5
  - statistics 126–9
  - time to finalise 10
- privacy determinations, numbers of 19
- privacy frameworks, fitness for purpose 24–5
- privacy impact assessments 19, 60
- Privacy in Practice course 47
- Privacy Professionals Network 64
- privacy protection 23–8
- privacy risks, advice regarding 38
- procurement 77–8
- professional membership assistance 75
- professional skills development 75
- program structure 6
- public awareness of privacy, promoting 46–50

*Public Governance, Performance and Accountability**Act 2013* 70

public servants, disclosing names of 55

purpose of the OAIC 7

Regulation and Strategy branch 14

regulation, contemporary approach to 58–67

Regulatory Action Committee (RAC) 8, 38, 58

resource statement 120

risk management 70

Schumann, Josephine 72

Senate Finance and Public Administration

Legislation Committee 29–30

Senior Executive Service

remuneration for 75–6, 122–3

satisfaction with 65

Services Australia

advice given to 62

FOI requests to 56, 131–2

shortened forms 156–8

small business participation 77

social media, OAIC use of 47

spent convictions 32, 35

staffing

employee engagement 65

learning and development initiatives 75

professional skills development 75

profile by level 74

SES remuneration 122–3

staff capability map 66

staff retention 65

work health and safety 76

workplace diversity 76

workplace relations 75

Stevens, David 15

strategic priorities 8

Strategic Priority 1 23–8

Strategic Priority 2 29–53

Strategic Priority 3 54–7

Strategic Priority 4 58–67

*Strengthening Australia's cyber security regulations**and incentives* discussion paper 25, 28

study assistance 75

Talking about performance framework 75

tax file number enquiries 32

Taylor, Anita 72

*Telecommunications Act 1997* 60

Telstra Health mobile application 61

'This Is Your Digital Life' app 40

Twitter, OAIC use of 47

Uber 39–41

UK Information Commissioner's Office (ICO) 8, 19,

24, 64

Undertaking a Privacy Impact Assessment course 47

vexatious applicant declarations 46

video teleconferencing, letter to providers 24

Woods, Peter 72

work health and safety 76

workplace diversity 76

workplace relations 75

year at a glance 10–13



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