



Volume 1

Briefs

28 and 29 August 2023

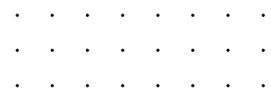
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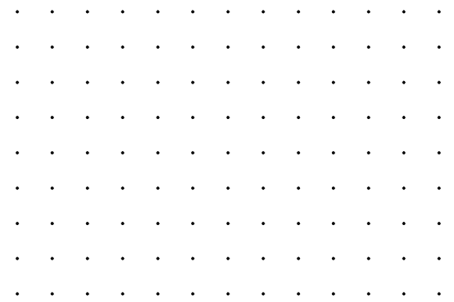


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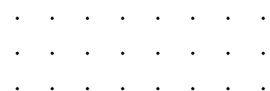
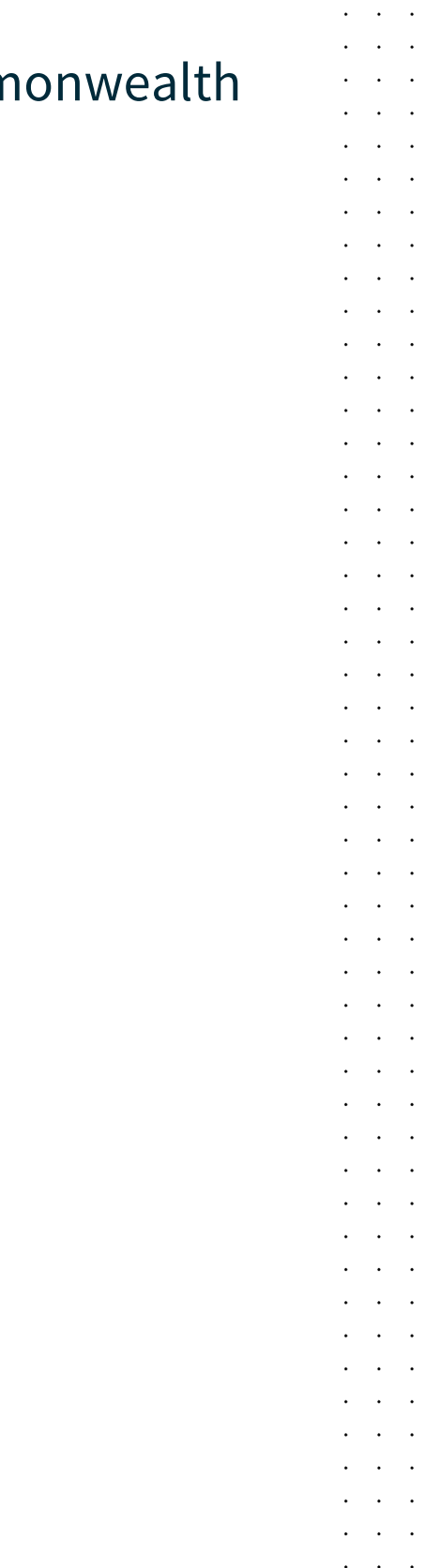
21	SES Staff Caps	D2023/020173
22	Corporate	D2023/018598





Inquiry into the operation of Commonwealth FOI laws

Volume 1 – Briefs



1. 2022–23 data include financial year to date figures as at **30 June 2023**.
2. Percentages may not add to 100% due to rounding.
3. Some historical data has changed based on updated information.
4. Data current as of 1 August 2023.

IC Reviews

	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23
IC reviews ongoing at period close	582	851	1,089	1,297	1,876	2,004
Ave age of IC reviews ongoing at period close (months)	6.3	9.1	11.6	14.5	15.1	18.9
IC reviews received	802	928	1,067	1,225	1,955¹	1,647
% change from PY	27%	16%	15%	15%	60%	-16%
IC reviews closed	610	659	829	1,017	1,376²	1,519
% change from PY	18%	8%	26%	23%	35%	10%
Average months to close	6.7	7.8	8.1	8.3	6.4	9.8

IC reviews closed within 12 months – target 80%

	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23
% closed <i>within</i> 12 months	84%	73%	71%	73%	83%	78%
No. closed within 12 months	513	482	592	740	1,144	1,180
% closed <i>over</i> 12 months	16%	27%	29%	27%	17%	22%
No. closed over 12 months	97	177	237	277	232	339

Age of IC reviews ongoing at period close

	2018–19		2019–20		2020–21		2021–22		2022–23	
	No.	%	No.	%	No.	%	No.	%	No.	%
≤ 6 months	296	35%	378	35%	350	27%	651	35%	459	23%
6–12 months	305	36%	252	23%	281	22%	306	16%	329	16%
12–24 months	234	27%	341	31%	405	31%	420	22%	561	28%
24–36 months	16	2%	112	10%	200	15%	328	17%	342	17%
36–48 months	0	0%	6	1%	57	4%	153	8%	227	11%
> 48 months	0	0%	0	0%	4	0%	18	1%	86	4%
Total	851	100%	1,089	100%	1,297	100%	1,876	100%	2,004	100%

¹ A transcription error resulted in **39** IC reviews incorrectly reported as received in 2021-22. There were 1,955 IC reviews received (1,995 in the published annual report).

² A technical fault resulted in **15** IC Reviews being incorrectly reported as closed in 2021-22. In addition, **one** IC review previously reported as closed was reopened after the annual report publication (1,392 in the published annual report).

Number over 12 months old (as at 31 March) : **1,156**

Number over 12 months old (as at 22 May): **1,208**

Number that we advised the Committee were over 12 months old at last Estimates – **1,055**

Number over 12 months old (as at 30 June): **1,216**

IC reviews on hand at 30 June 2023, by year received

Issue	No on hand at 31 March	%	On hand at last Estimates	On hand at 22 May	On hand at 30 June
2018	39	2%	47	34	27
2019	202	10%	238	172	155
2020	316	15%	329	310	285
2021	461	23%	464	451	437
2022	747	37%	808	702	641
2023	279	14%	124	391	459
Total	2,044	100%	2,010	2,060	2,004

Oldest ongoing IC review – date received: **23-Mar-18**

IC reviews closed 2022-23 requiring IC decision under s55K

	Closed FYTD	Percentage
IC Decision under s55k	68	4%
Other	1,451	96%
Total	1,519	100%

Deemed decisions received

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Deemed decisions received	21	57	349	465	1,107	854
% change from PY	N/A	171%	512%	33%	138%	-23%
Deemed decisions received (DHA)	6	16	170	315	885	594
% change from PY	N/A	167%	963%	85%	181%	-33%

FOI Complaints

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Complaints ongoing at period close	52	91	130	108	101	189
Ave age of investigations ongoing at period close (months)	5.0	11.0	12.3	18.0	9.9	11.6
Complaints received	62	61	110	152	216	212
% change from PY	72%	-2%	80%	38%	42%	-2%
Complaints closed	29	22	71	174	223	124
% change from PY	61%	-24%	223%	145%	28%	-44%
Average months to close	5.9	7.2	11.6	6.8	10.5	4.1

FOI complaints closed within 12 months – target 80%

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
% closed within 12 months	83%	82%	52%	82%	74%	94%
No. closed within 12 months	24	18	37	142	164	116
% closed over 12 months	17%	18%	48%	18%	26%	6%
No. closed over 12 months	5	4	34	32	59	8

Age of FOI complaints ongoing at period close

	2018-19		2019-20		2020-21		2021-22		2022-23	
	No.	%	No.	%	No.	%	No.	%	No.	%
≤ 4 months	12	13%	20	15%	26	24%	39	39%	63	33%
4-6 months	8	9%	19	15%	4	4%	5	5%	14	7%
6-9 months	17	19%	22	17%	5	5%	17	17%	13	7%
9-12 months	18	20%	17	13%	4	4%	13	13%	25	13%
> 12 months	36	40%	52	40%	69	64%	27	27%	74	39%
Total	91	100%	130	100%	108	100%	101	100%	189	100%

Oldest ongoing FOI complaint – date received: **19-Feb-19**

Top 3 agencies within highest volume of FOI complaints ongoing at 30 June 2023

	Complaints ongoing at 30-Jun-22
DHA	35
DVA	23
DHS	19
Total	77

- DHA: processing delays and lack of assistance to applicants

- DVA: varied, but primarily processing delays and failure to acknowledge FOI requests.
- DHS: processing delays, and failure to apply decision makers signature to decision

FOI vexatious applicant declarations

FOI vexatious applicant declarations s89k & s89M

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Ongoing at period close	3	1	4	2	5	1
Received	11	16	4	3	9 ³	2
Closed	10	18	1	5	6	6

FOI Extension of time notifications and requests

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
EOT requests requiring OAIC decision⁴						
Requests ongoing at period close	8	15	5	26	20	33
Ave age requests ongoing at period close (business days)	1	4	1	2	2	4
Requests received	532	785	1,353	992	1,550	1,678
% change from PY	-9%	48%	72%	-27%	56%	8%
Requests closed	531	778	1,363	971	1,556	1,665
% change from PY	-11%	47%	75%	-29%	60%	7%
Average business days to close	3	3	4	4	4	8
Other EOTs where agreement reached or IC review to be conducted						
Notifications received⁵	2,797	2,956	2,800	2,595	3,207	4,683
% change from PY	-26%	6%	-5%	-7%	24%	46%
EOTs for IC review or internal review received⁶	38	43	91	122	169	109
% change from PY	90%	13%	112%	34%	39%	-36%

Requests closed by type⁴

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Requests closed	531	778	1,363	971	1,556	1,350
s15AB - complex or voluminous	370	562	786	507	890	1,182
s15AC – deemed refusal	122	178	492	405	556	385
s54D – deemed affirmation	38	37	80	57	106	96
s51DA-amendment - deemed refusal	1	1	5	2	4	2

³ 8 published in the annual report

⁴ ss 15AB, 15AC, 54D, 51DA

⁵ s 15AA

⁶ ss 54B and 54T. Only one request has been received for s54B extension of time in 2018-19 financial year.

% change from PY	-11%	47%	75%	-29%	60%	7%
s15AB - complex or voluminous	-18%	52%	40%	-35%	76%	33%
s15AC – deemed refusal	9%	46%	176%	-18%	37%	-31%
s54D – deemed affirmation	31%	-3%	116%	-29%	86%	-9%
s51DA-amendment - deemed refusal	N/A	0%	400%	-60%	100%	-50%
Average business days to close	3	3	4	4	4	8
s15AB - complex or voluminous	3	3	4	4	5	9
s15AC – deemed refusal	3	3	5	3	4	6
s54D – deemed affirmation	2	3	4	3	4	7
s51DA-amendment - deemed refusal	0	2	4	4	4	7

FOI Requests

Total number of FOI requests received by the OAIC

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Requests received	95	252	235	193	335	334
Personal	39	154	144	121	183	188
Other	56	98	91	72	152	146
Internal Review	2	21	13	17	25	56
Personal		10	7	12	14	26
Other	2	11	6	5	11	30
Total	97	273	248	210	360	390

Version: 1	Cleared by: Annamie Hale	Action officer: Lisa Linehan
Current at: 1/08/2023	Phone number: 02 9942 4097	Action officer number: (02) 9297 9305

FOI HEARING BRIEF:

Number 2

OAIC's APS Census Results

Key Points

- As a result of the changes implemented via the 2022 Census Roadmap (**Attachment A**) the OAIC's 2023 Census results reflect improvements across all key Indexes compared to 2022 results:
 - Employee Engagement (+4pp)
 - Communication (+2pp)
 - SES Manager Leadership (+7pp)
 - Immediate Supervisor (+6pp)
 - Enabling Innovation (+5pp)
 - Wellbeing Policies and Support (+4pp)
- The APS Employee Census results provide an opportunity to reflect on the way we work and to make changes.
- We are committed to maintaining a highly engaged, skilled and professional workforce. We are also committed to acting upon the feedback we have received from our people. This has been reflected in the implementation of the OAIC 2022 Census Roadmap.
- The Information Commissioner has tasked the Senior Assistant Commissioner with leading the OAIC's response to the 2023 results, in partnership with Assistant Commissioners and People and Culture. This replicates the successful approach taken in 2022.

Areas of strength

- In 2023 the OAIC has:
 - improved against each of the Indexes and now sits **above** the APS overall result in relation to each Index. In 2022 we sat below the APS overall result in five of the six Indexes.
 - performed **above** the small agency overall results in relation to each Index
 - considerably improved each of our overall Index positions. For example, the Immediate Supervisor Index position has moved up 54 places from 82nd in 2022 to 28th in 2023.

- The 2023 Census results also reflect that OAIC staff are planning to stay with the agency for longer – with a 13pp drop in the in the number of people wanting leave as soon as possible or within the next 12 months. This is consistent with the OAIC reducing its attrition rate from 35% in 2022 to 15% in 2023. This can be partly attributed to the OAIC’s increased focus on supporting staff via a better resourced People and Culture team.
- The most significant changes have been found in the FOI Branch and Corporate Branches. In FOI there was a 33pp drop in the number of people wanting leave as soon as possible or within the next 12 months and 33pp increase in the number of people wanting to stay working in their position for at least the next 3 years.
- The Corporate Branch also saw a significant change where there was a 36pp drop in the number of people wanting leave as soon as possible or within the next 12 months and a 41pp increase in the number of people wanting to stay working in their position for the next one to two years.

Areas for further work

- Ipsos Australia (partnering with the APS Census team) presented an analysis of the OAIC’s results to the Commissioners, Senior Executive Service, People and Culture and the OAIC’s Business, Reporting and Data Analytics section on Thursday, 17 August. Ipsos identified the opportunities for further improvement to enhance optimal performance include:
 - having fewer competing priorities
 - improved technology
 - streamlined administrative processes
 - fewer layers of decision making, and
 - increasing a reasonable tolerance for risk.
- Public release of APS agency-wide results will occur in November 2023.
- The OAIC’s results have been circulated to staff.
- In 2022 the OAIC scores in employee engagement and innovation were marginally lower than comparator agencies. OAIC’s results indicated that there were ongoing challenges around workload and decision-making (which had been reflected in previous years’ results). This continues to be a theme in 2023.

Census Roadmap

- To ensure the OAIC benefited from the opportunities presented our 2022 Census results we began a program of work to embed changes via a Census Roadmap (attached) which set out:
 - what our people told us we can improve
 - how we planned to do that and
 - a timeframe for completion.

The Census Roadmap includes 22 individual commitments.

Three core focus themes:

- Strengthening leadership and management capability and Learning and Development opportunities
- Promoting staff wellbeing and a safe and healthy working environment
- Promoting, supporting and encouraging staff mobility, connectiveness and innovation.

Progress against Census roadmap

- ICT Q&A events have been regularly run and well attended - allowing all staff to share ICT difficulties and facilitate solutions. This will continue quarterly
- Creation of **s47E(d)** email inbox to enable staff to share innovation and plans to run an OAIC Wicked Problems program in September 2023
- Developed internal mobility guidance and broadcast internal opportunities and movements via weekly staff newsletter
- ARRIVAL, STAY and EXIT surveys have been implemented and a review of our Induction and off-boarding program is being progressed
- Social Committee has been re-enlivened & Social Teams chats created

- Learning and Development platform (LearnHub) released in December 2022 and is used to deliver mandatory training and coordinate easy to access training invitations
- Engaged with our people who live outside Sydney to discuss what support they need to thrive at the OAIC and then established the Better Together Committee to help embed our OneOAIC culture
- Arranged for external training experts to deliver seminars to support people in effectively communicating their own capacity and managing workload expectations
- Created email and meeting etiquette resources to support efficient email and meetings.
- Undertook a workforce planning exercise with the APSC and are considering their draft plan for the OAIC
- Uplifted tech in the Sydney meeting rooms
- We have arranged for our people in Brisbane, Adelaide and Melbourne to meet up and trial the serviced offices in their city.

Takeaways from 2023 Census

- 75% of employees are satisfied with their job, which is an increase of 12pp. The 2022 result was 63%.
- 80% of employees are proud to work for the OAIC – this is an increase in 17pp on the 2022 results.
- 86% of employees believe the OAIC supports and actively promotes an inclusive workplace culture – this is a 10pp increase on the 2022 results.

- 86% of employees believe they receive the respect they deserve from colleagues – this is an increase of 8pp on the 2022 results.
- 79% of employees believe their workgroup has the appropriate skills, capability and knowledge to perform well, but only 38% believe their workgroup has the tools and resources to perform well.
- The OAIC results saw a 5pp increase in the number of employees reporting they strongly agree or agree with feeling burned out by their work. The branch reporting the most burn out is the Corporate Branch.
 - 23% of R&S strongly agree or agree (down 10pp since 2022)
 - 44% of FOI strongly agree or agree (up 7pp since 2022)
 - 44% of DR/MI strongly agree or agree (up 12pp since 2022)
 - 57% of Corporate strongly agree or agree (up 7pp since 2022)
- Similarly, it is Corporate Branch that always or often finds their work stressful.
 - 20% of R&S always or often finds their work stressful (no change)
 - 38% of FOI always or often finds their work stressful (down 17pp since 2022)
 - 38% of DR/MI always or often finds their work stressful (up 2pp since 2022)
 - 57% of Corporate (up 7pp since 2022)
- 5% of staff experienced discrimination on the basis of their background or personal characteristic. This is a decrease of 5pp on the 2022 results which was 10%.
 - The FOI Branch saw an increase in discrimination (from 0% to 7%)
 - The R&S Branch saw no changes (steady at 3%)
 - The DR/MI Branches saw a drop of 14pp (from 20% to 6%)
 - The Corporate Branch saw a drop of 8pp (from 11% to 3%)

- 3% of staff were subjected to harassment or bullying. This is a decrease of 8pp on the 2022 results which was 11%. However, there was an increase of 7pp in relation to staff who were unsure if they had been subjected to harassment or bullying (this primarily comes from a better result from the Corporate Branch). The percentage of staff who reported that had NOT been subjected to harassment or bullying is as follows:
 - 87% of the FOI Branch (from 90% in 2022 down to 87% in 2023)
 - 90% of the R&S Branch (from 93% in 2022 down to 90% in 2023)
 - 85% of DR/MI Branches (from 84% in 2022 up to 85% in 2023)
 - 93% of the Corporate Branch (from 83% in 2022 up to 93% in 2023)
- 1% of staff witnessed behaviour that was serious enough to be viewed as corruption. This is an increase of 1pp on the 2022 result (which was 0%). The results do not reflect from where in the agency this observation is made

Version: 1.0	Cleared by: Melanie Drayton	Action officer: -
Current at: 23/08/2023	Phone number: s47E(d)	Action officer number: -



Census roadmap



WHAT WE HEARD PEOPLE SAY

WHAT WE'RE GOING TO DO

- 01 'Access to learning and development opportunities could be improved'
- 02 'There should be greater mobility within the OAIC'
- 03 'We can improve 'connectedness' to and within the OAIC'

WHAT WE'RE GOING TO DO

- ▷ Finalise the Learning & Development calendar. **ACTIONED**
- ▷ Install LearnHub software to facilitate easy access to learning and development opportunities. **ACTIONED**

WHAT WE'RE GOING TO DO

- ▷ Create opportunities for people to move between teams/Branches by filling vacancies using internal EOIs whenever possible. **ACTIONED**
- ▷ Use the Weekly Wrap to let people know of internal opportunities and externally advertised roles. **ACTIONED**
- ▷ Use the Weekly Wrap to let people know of internal movements. **ACTIONED**

WHAT WE'RE GOING TO DO

- ▷ Revise the OAIC's Induction and off-boarding programmes, including the addition of Arrival, stay and exit surveys. **UNDERWAY**
- ▷ Re-enlivening the OAIC Social Committee. **ACTIONED**

- 04 'Workload is significant'
- 05 'Support is needed to find a better work/life balance'
- 06 'The technology in the Sydney meeting rooms needs to be improved'
- 07 'Clarification is needed about the ICT support that can be provided by DEWR'

WHAT WE'RE GOING TO DO

- Partner with the Australia Public Service Commission to undertake workforce planning. **UNDERWAY**

WHAT WE'RE GOING TO DO

- Revise the TOIL policy for EL staff. **PAUSED**

WHAT WE'RE GOING TO DO

- Install ceiling microphones, roaming cameras and screens that best fit the needs of each meeting room. **UNDERWAY**

WHAT WE'RE GOING TO DO

- Invite interested people to drop into ICT Q&A sessions. **ACTIONED**

- 08 'There needs to be an easy way to raise good ideas'
- 09 'Increase the opportunities for 'whole of OAIC' social interactions'
- 10 'Improvements could be made to better support people working outside Sydney'
- 11 'There are numerous tasks with competing priorities'

WHAT WE'RE GOING TO DO

- ▷ Create ideas@oaic.gov.au email address and an anonymous survey (monitored by People & Culture) and invite staff to make suggestions at any time. **ACTIONED**
- ▷ Establish the 'OAIC Ideas Forum' to allow people to socialise their ideas and suggested improvements. **UNDERWAY**

WHAT WE'RE GOING TO DO

- Create opportunities for people to make connections with those within and outside their work group by:
 - ▷ starting social chats on Teams. **ACTIONED**
 - ▷ re-enlivening the OAIC Social Committee. **ACTIONED**
 - ▷ arranging for people in the same city to meet for regular in person catch-ups. **UNDERWAY**

WHAT WE'RE GOING TO DO

- ▷ Provide the opportunity for office-based working days in each city by using serviced offices once a month. **UNDERWAY**
- ▷ Secure new accommodation in Canberra that is better suited to the OAICs needs. **PAUSED**
- ▷ Work with people outside Sydney to find out what support they need to thrive at the OAIC. **ACTIONED**

WHAT WE'RE GOING TO DO

- ▷ Create an 'email etiquette' Info Card on FYI that sets out our expectations around the use of email. **ACTIONED**
- ▷ Create a 'meeting etiquette' Info Card on FYI that sets out our expectations around the timing and length of meetings. **ACTIONED**
- ▷ Deliver skills seminars to support people in effectively communicating their own work capacity and managing workload expectations. **ACTIONED**

FOI HEARING BRIEF

Number 3

Staffing – Figures are as at 30 June 2023

Key Points

- 2022-23 ASL cap: 167 (2023-24 cap: 192 per May Budget)
- FTE number: Payroll 159.6 + External 2.6 = Total 162.2
- Headcount: Payroll 183 + External 3 = Total 186
(Definition: Includes all staff on payroll (paid, LWOP, maternity leave, extended paid leave and casual), staff on transfers into the agency paid for by OAIC and excludes staff on transfers out of the agency not paid for by OAIC)
- OAIC has very limited reliance on contract staff (2.6 FTE which is 2% of total workforce, down from 4% at prior estimates), performing well in tough labour market. Use of non-APS staff is restricted to interim/fill roles whilst more permanent recruitment process undertaken.

STAFFING ALLOCATION (FTE)

	Allocated staffing*	Allocation as % of total staffing	Actual staffing Payroll (FTE)	Actual Staffing External	Actual Staffing Total (FTE)
R&S	36.8	22.7%	33.1	-	33.1
FOI	22.4	13.8%	24.1	0.6	24.7
DR	47.5	29.3%	46.9	1.0	48.9
MI	5.6	3.5%	8.6	-	8.6
Corporate	25.0	15.4%	23.7	1.0	24.7
Legal Services	15.2	9.4%	13.4	-	13.4
Executive	9.5	5.9%	9.8	-	9.8

* Refers to allocation of staffing in the management budget. Actual FTE at 30 June 2023 is displayed in as "Actual staffing Payroll (FTE)"

- The below table sets out the assigned ASL and total budget by Branch.

	Budget 2022-23 ASL	Actual 2022-23 ASL*	Proposed 2023-24 ASL	2022-23 Actual Total Branch	Proposed 2023-24 Budget Total Branch
R&S	36.8	30.8	41.8	\$4,501,388	\$6,085,000
FOI	22.4	20.3	22.4 (+8.9)	\$3,060,272	\$3,207,200 (+\$1,234,000)
DR	47.5	43.5	54.8	\$6,184,987	\$6,282,400
MI	5.6	2.9	7.5	\$529,950	\$1,805,700
Corporate	23.6	20.0	33.1	\$4,108,906	\$4,603,700
Legal Services	12.9	10.4	19.2	\$7,416,107	\$9,735,000
Executive	9.5	9.2	13.8	\$3,406,583	\$5,254,500

* Actual average for the whole 2022-23 reporting period.

The table excludes:

- 2022-23: FOI approved an additional \$650,000 as operating loss to support priority work. Of this extra allocation \$66K was spent in the year.
- 2023-24: FOI approved additional \$650,000 as risk-based approach for additional staff and the remaining \$534K from the prior was carried over into FY24. Total proposed budget is \$4,441,000.

EMPLOYMENT TYPE (FTE)

	Number FTE			% of total FTE		
	Jun 2023	Mar 2023	Dec 2022	Jun 2023	Mar 2023	Dec 2022
Ongoing	145.2	139.3	125.5	89%	86%	81%
Non-ongoing	14.4	15.4	21.6	9%	10%	14%
Contractor	2.6	6.6	7.6	2%	4%	5%

TURNOVER (APSC Separation Rate)

	Turnover %*	Small agency %	PS average %
2022-23	15%	Not yet available	Not yet available
2021-22	35%	18%	8.1%
2020-21	18%	16.7%	7%
2019-20	18%	15.8%	5.9%

* Based on APSC definitions which use ongoing headcount (including s.26 temporary transfers into the OIAC)

To increase staff attraction and retention OAIC is:

- continuing to implement OAIC's Hybrid Work Model that supports attraction of the best talent from across Australia, and fully supports staff working both from home and the office,
- improving recruitment processes including appointment of a recruitment specialist to lead recruitment development,
- implementing a Census Roadmap to respond to the key feedback provided in the Census,
- providing an ongoing commitment to listening and responding to staff's needs through vehicles such as the Stay Survey, and
- providing increased learning & development opportunities through the new LearnHub.

UNPLANNED LEAVE PER FTE

	Days per FTE	Small agency average	PS average
2022-23	9.9	Not yet released	Not yet released
2021-22	8.5	10.1	12.8
2020-21	6.3	9.8	12.2
2019-20	9.4	11.2	13.1

* Defined as personal, carers leave, compassionate leave and jury leave hours 1-7-22 to 30-6-23 as a % of payroll FTE

- What is the OAIC doing about unplanned leave?
 - Unscheduled leave is monitored and reported to Operations Committee

- Patterns or issues identified to support early intervention and support.
- OAIC has low unplanned leave comparative to APS average
- OAIC has low unplanned leave comparative to small agency average

Version: 2.0	Cleared by: Annamie Hale	Action officer: Mark Smolonogov
Current at: 14/08/2023	Phone number: 02 9942 4097	Action officer number: 02 9942 4243

Legal matters

- The OAIC Legal Team is a dedicated legal team within the Corporate Branch responsible for the delivery of all OAIC legal services and the management of legal risk and external legal expenditure in the OAIC.
- The core Legal services provided include:
 - Providing legal advice across all OAIC functions and powers (including complaints, guidance, law reform, procurement, and employment)
 - Advising on investigations
 - Identifying legal risks and issues that impact on the OAIC and its regulatory obligations
 - Manage and instruct on all OAIC litigation
 - Processing FOI requests and reporting on our FOI decision making
 - Engage and instruct all external legal service providers, including Counsel
- Below is an overview of the current legal matters with the Legal team.

Legal matters on foot*Major Investigations*

- The Legal team and General Counsel provides the Major Investigations Branch with legal advice and assistance in relation to Commissioner Initiated Investigations into significant privacy data breaches. These include the Optus, Medibank, Medlab (ACL) and Latitude Financial Services data breach investigations.
- The Legal team is responsible for engaging, instructing and monitoring external legal providers (including counsel) assisting with significant data breaches.
- Legal services provided by the Legal team and General Counsel includes: reviewing notices to produce issued under s 44 of the Privacy Act; reviewing case theory documents and evidence matrices; drafting and advising on MOUs; attending witness examinations; and instructing counsel.
- The Legal team has **27 open** LEG files at present relating to work undertaken for the Major Investigation Branch.

Representative complaints and related Federal Court class actions

- The Legal team and General Counsel provides the Information Commissioner with legal advice and assistance in relation to representative complaints made under the Privacy Act. These include representative complaints about the Optus, Medibank and Latitude Financial Services data breaches.

- Legal services provided include: legal advice in relation the conduct of representative complaints and related Federal Court class actions; drafting and despatching correspondence to legal representatives; statutory interpretation advice about the Commissioner’s jurisdiction and operation of relevant provisions in the Privacy Act.
- The Legal team is responsible for briefing and instructing counsel.
- The Legal team has **4 open** LEG representative complaint files open at present.

Litigation

- The Legal team and General Counsel manage and instruct on all litigation matters where the Australian Information Commissioner is a party. This includes Federal Court, Supreme Court and Administrative Appeals Tribunal applications.
- In accordance with the Legal Services Directions, the Legal team is responsible for engaging, instructing and monitoring external legal providers (including counsel) who represent the Information Commissioner in these proceedings.
- The table below provides an overview of current litigation matters managed by the Legal team. There are **31 open** litigation matters as at 24 August 2023.

Jurisdiction	Federal Court	AAT	Supreme Court Qld
Privacy	11	8	2
FOI	3	7	Nil
Total	14	15	2

Requests for legal advice

- The Legal team and General Counsel provides in-house legal advice to the Executive and staff of the OAIC. Advice is provided in information law (Privacy and FOI), Consumer Data Right, procurement, contracts, employment law and legal compliance.
- In accordance with the Legal Services Directions, the Legal team is responsible for engaging, instructing and monitoring external legal providers (including counsel) who make be engaged to provide legal advice.
- The table below provides an overview of open legal advice files with the Legal team.

Branch	Number of requests
Executive	4
Privacy Dispute Resolution	36
Freedom of Information	7
Regulation & Strategy	16
Major Investigations	3
Corporate	16
Total	82

FOI processing and statistical reporting

- The Legal team is responsible for processing all FOI requests made to the OAIC. The Legal team also processes administrative access and APP12 requests made for access to material held in the Legal team.
- As at 24 August 2023, the Legal team has **20 FOI** requests and **6 administrative access** requests on hand.

Total number of FOI requests received by the OAIC as at 30 June 2023

	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23
Requests received	95	252	235	193	335	334
Personal	39	154	144	121	183	188
Other	56	98	91	72	152	146
Internal Review	2	21	13	17	25	56
Personal		10	7	12	14	26
Other	2	11	6	5	11	30
Total	97	273	248	210	360	390

Complaint handling

- Lawyers in the Legal team and General Counsel are Privacy Officers. The team processes privacy complaints about the OAIC as an agency and complaints about the OAIC made under s 36 of the Privacy Act.
- The Legal team also processes service complaints about staff in the Legal team or other teams where appropriate, complaints made to the Australian Human Rights Commission, Public Service Code of Conduct complaints, assists with applications made under the *Public Interest Disclosure Act 2013* and provides advice on complaints made to the Ombudsman about the OAIC.

- The table below provides an overview of open complaint files with the Legal team.

Complaint type	Number
Privacy complaint about OAIC	31
Service complaint about OAIC	21
AHRC complaint	1
Code of Conduct complaint	1
Total	54

Privacy Governance functions

- The Legal team and General Counsel are responsible for managing the OAIC’s Privacy Management Plan and related Privacy governance functions including conducting Privacy Threshold Assessments and Privacy Impact Assessments. The Legal team and General Counsel also manage any data breaches involving the OAIC.
- The table below provides an overview of open files relating to the OAIC’s privacy governance functions.

File type	Number
PTA	7
PIA	5
PMP	2
Data breaches	1
Total	15

Enterprise bargaining

- The Assistant Commissioner Corporate and Legal team are leading the OAIC’s Enterprise Bargaining negotiations. This includes the APS wide negotiations (Part A) and OAIC agency specific negotiations (Part B).

Management of the legal services expenditure

- The Legal team and General Counsel are responsible for managing the OAIC’s external legal services expenditure in accordance with the *Legal Services Directions 2017* and *Public Governance, Performance and Accountability Act 2013*. This includes engaging and instructing legal services providers in accordance with the Whole of Government Australian Legal Services Panel agreement and engaging and instructing counsel.
- The Legal team is also responsible for recovering costs awarded to the Australian Information Commissioner in Court proceedings. The Legal team as **19 open** cost recovery files.

External reporting to the Office of Legal Services Coordination

- The Legal team and General Counsel are responsible for external reporting to the Office of Legal Services Coordination.
- This includes identifying and reporting significant legal issues, annual reporting of legal expenditure and certifying compliance with the Legal Services Directions on behalf of the Australian Information Commissioner.

Version:1.0	Cleared by: Annamie Hale	Action officer: Emma Liddle
Current at: 10/08/23	Phone number: 02 9942 4097	Action officer number: 02 9942 4153

Com Brief – Budget and Resourcing

The 2023-24 Budget included funding to continue regulation of MyHealth Record, CDR and Digital Identity initiatives. It also provided additional funding to support the return to the three-Commissioner model. The funding will support privacy activities, including work responding to the increased complexity, scale, and impact of notifiable data breaches, as reflected in recent large-scale breaches. Forward estimates are reduced by terminating measures reducing overall funding by 48% by 2025-26. The OAIC is currently applying existing resources to reduce the aged FOI matters during 2022-23 and will continue that work during 2023-24.

FOI Funding

- Since 2018 the OAIC has sought additional funding for the FOI regulatory function.
- The only additional funding provided has been 2021-22 Budget provided \$4.0M over the forward estimates for the appointment of Freedom of Information Commissioner, Assistant Commissioner FOI and support staff, \$1.0M p.a. ongoing.
- The OAIC is currently applying existing resources to reduce the aged FOI matters during 2022-23 and will continue that work during 2023-24. \$1.3M from liquidity reserves has been assigned to fund the work.
- This funding is available due to FOI being unable to fully utilise their allocated ASL over the last 3 years. This arose from difficulty in recruiting staff as needed due to the tight labour market, partially driven by COVID.
- The staffing underutilisation has been costed at \$1.3M and has arisen as follows:

ASL	FY20	FY21	FY22
Budget	18.8	20.2	22.6
Actual	14.0	19.0	21.7
	(4.8)	(1.2)	(0.9)
Cummulative			(6.9)

- The additional resource is being funded out of existing liquidity. This was not possible earlier due to OAIC’s tight liquidity position as indicated by losses over the last 3 years:

	FY19	FY20	FY21	FY22
Cash loss	(0.7)	0.5	(2.0)	0.6

- The liquidity has been released through the move to a new shared services arrangement and the move to Hybrid working (refer analysis in the Corporate brief).
- The funding profile for FOI is at Appendix A.

Freedom of Information Commissioner

- The Freedom of Information Commissioner, Mr Leo Hardiman PSM KC, commenced with the OAIC on 19 April 2022 and resigned his appointment to take effect 19 May 2023.
- On 28 March 2023, the Senate referred an inquiry into the operation of Commonwealth Freedom of Information (FOI) laws to the Legal and Constitutional Affairs References Committee for report by 7 December 2023, with particular reference to:
 - a) the resignation of the Commonwealth Freedom of Information Commissioner and the resulting impacts;
 - b) delays in the review of FOI appeals;
 - c) resourcing for responding to FOI applications and reviews;
 - d) the creation of a statutory timeframe for completion of reviews; and
 - e) any other related matters.
- The Attorney-General The Hon Mark Dreyfus KC MP announced on 3 May 2023 there will be a selection process to fill the Freedom of Information Commissioner role and that in the interim Ms Toni Pirani has been appointed as acting Freedom of Information Commissioner, effective 20 May 2023.
- Recent amendments to the AIC Act have allowed the Information Commissioner to delegate certain FOI functions to senior members of staff. On 3 February 2023, the Australian Information Commissioner delegated powers under ss 55K, 73 and 86 of the FOI Act to the SES Band 1 officer in the Freedom of Information Branch.

OAIC 2022-23 & 2023-24 Funding & Measure Status

2022-23

Funding

- The OAIC's 2022-23 Budget departmental appropriation was \$29.7M and \$0.63M capital with an ASL cap of 167.
- 2 active MOUs: \$0.2M with ACT government and \$0.1M with Home Affairs
- Funding included:

- \$5.5M (11 ASL) terminating measure, \$3.0M in 2022-23 and \$2.5M in 2023-24, to fund the OAIC’s investigation into the information handling practices of Optus.
- \$16.5M and \$0.5M in capital over 2022-23 and 2023-24 for its privacy regulatory function to facilitate timely responses to privacy complaints and strengthen enforcement action relating to social media and other online platforms while waiting for the review of the Privacy Act to be finalised.
- Funding reduction of \$0.4M (\$0.45M over forward estimates) for APS reform funding and election savings measures.
- \$3.6M for Consumer Data Right- Future Directions over forward estimates.

Measure Status

- The terminating measures within the October 2022 revised 2022-23 budget being:

Digital Economy Strategy - Consumer Data Right	\$1.5M	8.0 ASL	Treasury
Digital Economy Strategy - My Health Record	\$2.1M	12.8 ASL	Health
Digital Economy Strategy - Expanding Digital Identity	\$0.9M	3.5 ASL	Finance

have all been replaced with new terminating measures (refer HTB-04).

- The reduction in the Privacy measure year on year of \$0.5M has been offset by the new Strengthening Privacy measure (refer HTB-04)
- The reduction in the Optus hunting licence year on year of \$0.5M (1.6 ASL) has been offset by the major investigation funding in the new Strengthening Privacy measure (refer HTB-04)

2023-24

Funding

- The OAIC’s 2023-24 Budget departmental appropriation is \$46.5M and \$1.0M capital with an average staffing level (ASL) cap of 192.
- 1 active MOU for \$0.2M with ACT Government, concludes 30 June 2024.
- Key funding for privacy of \$16.1M (27.5 ASL) (\$44.3M over forward estimates) includes \$1M of capital funding. The funding has been provided to support privacy activities, including work responding to the increased complexity, scale and impact of notifiable data breaches, as reflected in recent large-scale breaches.

- Budget funding also includes \$5.2M with 24 ASL (replacing FY23 funding of \$3.7M with 20 ASL) to continue terminating funding for the next 2 years for MyHealth Record and CDR and for 1 year for Digital Identity. [Impact over FES \$9.2M]

Measure Status

- Funding reduces at the end of 2023-24 by \$15.2M (47 ASL) 33% due to:
 - \$8.2M (27.5 ASL) terminating Privacy measure awaiting Privacy legislation
 - \$1.1M (5.5 ASL) terminating Digital ID funding pending new legislation
 - \$2.5M (9 ASL) terminating Optus measure
 - \$3.8M (5 ASL) reduction in Strengthening Privacy measure due to end of major investigation funding

2024-25

- Funding reduces at the end of 2024-25 by \$6.9M (18.75 ASL) 22% due to:
 - \$3.0M reduction in Strengthening Privacy measure due to end of strategic review and contingent litigation funding
 - \$2.4M (12.75 ASL) termination of MyHealth Record funding
 - \$1.7M (6 ASL) termination of short-term CDR funding
- Most of the terminating measures are ongoing obligations for the OAIC subject to finalisation of legislation around the Digital Economy Scheme and the Privacy Act.
- The My Health Record measure is related to regulating privacy aspects of the My Health Records system. This replaced the same funding previously provided via an MOU with the Australian Digital Health Agency.

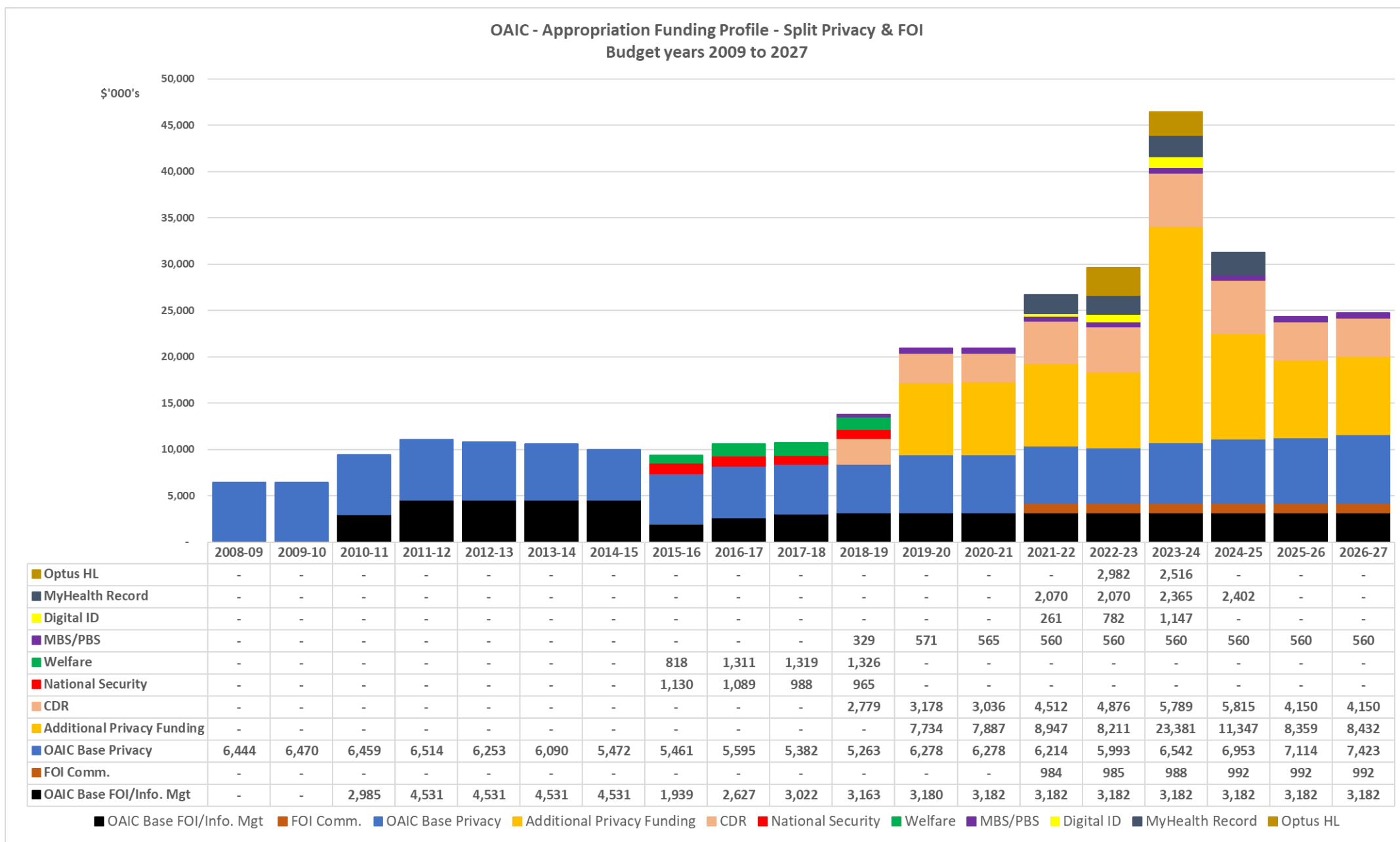
Summary of Terminating measures & Forward Estimates

- Future funding for the OAIC declines over the next 2 years by \$22.1M (48% / 66 ASL) made up of \$15.2M (33% / 47 ASL) in FY2024-25 and \$6.9M (22% / 19 ASL) in FY2025-26. This funding reduction comprises:
 - \$5.2M (24 ASL) in terminating measures related to MyHealth Record, CDR and Digital Identity
 - termination of \$2.5M (9 ASL) of the Optus measure in 2023-24
 - termination of \$3.0M (5 ASL) for major investigation funding in 2023-24

- termination of \$8.2M (27.5 ASL) of privacy funding in 2023-24. This reduction may be addressed in the 2024-25 Budget process in the event of Privacy Act reform.

Version:1.0	Cleared by: Annamie Hale	Action officer: Simon Crone, CFO
Current at: XX/05/23	Phone number:	Action officer number: s47E(d)

Appendix B – Historical funding profile & composition



Description of funding components

Component	Description
OAIC Base Privacy	Total agency funding from 2009 to 2016, solely Privacy base funding after from 2017 onwards after the transfer back from AHRC and AGD.
Additional Privacy Funding	<p>This includes various terminating measures since 2017, being:</p> <ul style="list-style-type: none"> • Privacy & Social Media - First tranche - To support a new privacy regime for social media and online platforms that trade in Australians' personal information, underpinning new penalties and enforcement powers under the Privacy Act, ensuring that there are appropriate safeguards and penalties for the misuse of Australians' private information, including by major social media platforms. • Transition of shared services & federal court costs - To cover transition costs to DESE and SDO/SAP as well as the ongoing litigation on social media. • Privacy & Social Media - Second tranche - To process privacy complaints and enhance the OAIC's capacity to take regulatory action for breaches of privacy, such as litigation against social media platforms. Allows for funding until completion of review of the Privacy Act • Strengthening Privacy – funding in 23-24 budget to support NDB work (incl. major investigations), data capability, strategic review and a Privacy Commissioner.
OAIC Base FOI (2017 onwards)	<p>Comprises the FOI funding returned to the OAIC after the reorganisation, being:</p> <ul style="list-style-type: none"> • 2017 the funding returned from AHRC and AGD • 2018 the funding returned from AAT including merits reviews, document management and dealing with clients previously handled by the AAT
FOI Commissioner (2022 onwards)	To fund the FOI Commissioner and support staff.
CDR (2019 onwards)	<p>Combines the various CDR components, being:</p> <ul style="list-style-type: none"> • The OAIC and Australian Competition and Consumer Commission (ACCC) co-regulate the CDR scheme. The OAIC is the primary complaint-handler and has responsibility for overseeing the privacy aspects of the scheme. The OAIC also works closely with the ACCC to deliver a consumer education campaign and to publish guidance for consumers and industry. • VDR Enhancement & Future Directions - Continued regulation of the CDR scheme reflecting the expansion of the scheme to include new sectors.

Description of funding components (continued)

National Security (2016, 2017 to 2019 in AHRC)	Regulatory oversight of privacy implications arising from the Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014 and the Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015. Oversight includes provision of guidance material, assessments, advice and complaint handling activities.
Welfare data matching (2016 to 2019)	To provide regulatory oversight of privacy implications arising from the Department of Human Services' (DHS) Increased Welfare Compliance from Data Matching NPP
MBS/PBS (2019 onwards)	Complaint handling for the guaranteeing Medicare regime, and the mechanism through which consumers can seek a formal remedy to redress a breach of their privacy; and respond to general enquiries from the community. This includes investigating and taking enforcement action in relation to breaches of the scheme, including the conduct of Commissioner-Initiated Investigations. The funding also enables the OAIC to undertake two privacy assessments (audits) per year to proactively monitor whether information subject to the arrangements is being maintained and handled in accordance with the relevant legislative obligations and recommend how areas of non-compliance can be addressed and privacy risks reduced.
Digital Identity	To acquit the statutory requirements of the digital identity scheme while also appropriately focusing on the timely investigation and enforcement of high-privacy risks.
MyHealth Record	To continue to undertake the My Health Record privacy regulatory functions. This is done to provide the community with confidence in the handling of digital health information.
Optus	To support the OAIC's response to the Optus incident in the form of an investigation into the personal information handling practices of Optus companies.

Appendix C – Historical ASL Cap profile



COMMISSIONER BRIEF

Information Commissioner reviews

Number 6

- Prior to 2022-23 (in which, for the first time since 2015-16, the OAIC experienced a decrease in the number of IC reviews received compared to the previous year), the OAIC experienced a significant increase in the number of IC reviews received each year. We continue to examine the way we perform our IC review function and to identify and implement changes to maintain and improve our performance. While IC reviews continue to be finalised in increasing numbers, there is a growing number of older matters that are unable to be finalised in a timely way within existing resources.
- **Initiatives to improve finalisations and reduce aged matters:** The OAIC is continuously looking at ways to increase the number of finalisations as well as to reduce the number of matters over 12 months old:
 - We have focused greater resources within the FOI Branch to IC reviews, including restructuring the branch to place more resources into case management resulting in improved allocation times of IC reviews for case management.
 - We have focused on finalising all 2018 IC reviews by the end of August 2023 (or shortly thereafter) and prioritising the finalisation of 2019 IC reviews this financial year. We have written to parties in IC reviews received in 2020 to confirm whether a) applicants wish to proceed with their IC reviews and b) whether respondents wish to maintain their exemption claims.
 - We are considering publishing statistics about our current case load which we anticipate will assist applicants to identify the stage they are currently in.
 - The OAIC has consulted on proposed revisions to the 2 existing procedure directions (one for agencies and ministers, and one for IC review applicants) (see Commissioner Brief – IC review procedure direction). The proposed changes are intended to facilitate greater engagement between applicants and respondent agencies and ministers during the IC review with a view to resolving IC reviews in a more timely and cost effective way. The revised procedure direction:

- clarifies the process for dealing with IC review applications involving deemed access refusal decisions
 - requires agencies and ministers to undertake engagement with an applicant at the commencement of an IC review
 - provides that submissions will only be requested after the completion of the initial triage and early resolution process, and following any case management activities that may occur as a result of the compulsory engagement process
 - provides that no further submissions will be accepted from either party to an IC review (unless either requested by the OAI or procedural fairness requirements are identified)
 - articulates additional potential regulatory action for non-compliance with the direction.
- We are identifying decisions which could assist in the resolution of certain priority cohorts of matters (searches, charges, practical refusals, and IC reviews relating to change of government) without proceeding to a s 55K decision, for example the charge decision in *'ABX' and Department of Veterans' Affairs (Freedom of information)* [2022] AICmr 57 and the practical refusal decision in *Chris Drake and Australian Transaction Reports and Analysis Centre (Freedom of information)* [2023] AICmr 6 (8 February 2023).
 - Recent amendments to the *Australian Information Commissioner Act 2010* permit delegation of IC review decisions made under s 55K. The Information Commissioner delegated the s 55K power to the Assistant Commissioner, Freedom of Information on 3 February 2023. This is allowing more routine IC reviews to be able to be finalised by a delegate. The Assistant Commissioner has recently made the following decisions under s 55K:
 - *'ADY' and The Treasury (Freedom of information)* [2023] AICmr 60 (14 July 2023)

- *'ADZ' and Department of Industry, Science and Resources (Freedom of information)* [2023] AICmr 62 (26 July 2023)
- *Jeremy Kirk and the Australian Federal Police (Freedom of Information)* [2023] AICmr 61 (17 July 2023)
- *John Abbot and the Bureau of Meteorology (Freedom of information)* [2023] AICmr 54 (30 June 2023)
- The OAIC has also moved to a protected network, which has reduced the resources required in receiving documents via safe hands or via Kojensi, which has assisted with focusing resources and time on the resolution of matters.
- **Expedition/Prioritisation:** Some applicants in more recent IC reviews have requested that their matters be prioritised or expedited. While the OAIC is continuously looking at ways to increase the number of finalisations and seeks to progress all matters in a timely manner, we require persuasive reasons to give recent IC reviews precedence over the growing number of older matters.
- **IC review timeframes:** The timeframe for resolving IC reviews depends on various factors, including:
 - whether an extension of time is required for the applicant to lodge an application (s 54T)
 - the nature of the access refusal reason, including whether it was originally a deemed access refusal and/or it involves consideration of exemption claims
 - the nature of the exemption claims (non-conditional/conditional exemptions) and whether any third party consultation is required
 - the number of exemptions/issues under consideration
 - the number of documents at issue and the manner in which exemptions are applied (if any)
 - the classification of the documents at issue and whether the OAIC possesses a copy of the documents or must inspect the documents
 - whether the application is finalised by agreement (s 55F), withdrawal (s 54R), discontinued/declined (s 54W), or a Commissioner decision (s 55K)

- whether it requires specific procedural steps to be undertaken during the IC review process prior to proceeding to a decision (seeking evidence from the Inspector-General of Intelligence and Security (ss 55ZA–55ZD))
- the resourcing available to undertake the IC review function.

The table below sets out *ideal average* timeframes for the finalisation of particular IC review applications, where:

- the decision under review is not a ‘deemed access refusal’
- the process is based on the *current* IC review procedure direction,
- each matter is proceeding through the process with little delay, including where the parties are providing responses within the set timeframes and responses are provided through informal requests rather than compulsive powers
- the preliminary views may be issued with a s 54Z notice
- there are no matters awaiting allocation
- there are sufficient resources allocated to the IC reviews function, including:
 - multiple sub-teams to specialise in cohorts of matters, and
 - there are sufficient decision makers to issue s 55K decisions.

Categories	Ideal time range
Single issue: Adequacy of searches	2 – 3 months
Single issue: Practical refusal	3 – 6 months
Single issue: Charges	2 – 6 months
Single issue: Exemptions (Single issue/Limited documents)	3 - 6 months
Multiple issues: Exemptions (s 33/34) <i>* May depend on IGIS response time</i>	6 - 9 months
Multiple issues: Exemptions (Multiple issues/Multiple documents/Third party consultation)	6 - 12 months

Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws

IC REVIEW STATISTICS

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Received	178	461	507	524	373	510	633	802	928	1,067	1,225	1,955	1,647
Finalised	26	254	419	646	482	454	515	610	659	829	1,017	1,376	1,519
KPI ¹	100%	57%	40%	72%	71%	87%	86%	84%	73%	71%	73%	83%	78%
Ave time to finalise (months)	2.0	5.6	8.8	9.2	9.2	6.8	6.2	6.7	7.8	8.1	8.3	6.4	9.8
Finalised less than 12 months	26	233	289	462	343	395	445	513	482	592	740	1,144	1,180
Finalised more than 12 months		21	130	184	139	59	70	97	177	237	277	232	339
On hand end period	152	359	447	325	216	272	390	582	851	1,089	1,297	1,876	2,004
On hand end period >12 mths		57	104	108	34	14	18	81	250	459	666	919	1,216
On hand end period >24 months			7	27	13			5	16	118	261	499	655
IC review deemed refusal (s 15AC)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	21	57	349	465	1,107	854

HOW IC REVIEWS ARE FINALISED

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Without formal decision ²	18 (69%)	96 (38%)	198 (47%)	318 (49%)	174 (36%)	157 (35%)	160 (31%)	229 (38%)	268 (41%)	333 (40%)	402 (40%)	514 (37%)	476 (31%)
Withdrawn ³	4 (15%)	108 (43%)	115 (27%)	186 (29%)	115 (24%)	175 (39%)	223 (43%)	200 (33%)	275 (42%)	334 (40%)	409 (40%)	684 (50%)	879 (58%)

¹ From 2010-11 to 2012-13 KPI was 80% within 6 months. From 2013-14 onwards KPI is 80% within 12 months.

² Finalised under: s 54W(a) (deemed acceptance of PV/appraisal; discontinued) s 54W(a)(i) (frivolous, vexatious, misconceived, lacking in substance, not in good faith), s 54W(a)(ii) (failure to cooperate), s 54W(a)(iii) (lost contact), s 54W(c) (failure to comply), s 89K (vexatious applicant declaration (as entered in Resolve; this was reported as 's 89M(2)(b) – refuse to consider' in last year's annual report)), s 54N (invalid/out of jurisdiction).

³ Finalised under s 54R (withdrawn by applicant).

s 55F ⁴	1 (4%)	2 (1%)	0 (0%)	3 (0%)	4 (1%)	10 (2%)	13 (3%)	42 (7%)	25 (4%)	29 (3%)	14 (1%)	6 (0%)	2 (0%)
s 54W(b) ⁵	0 (0%)	22 (9%)	17 (4%)	41 (6%)	61 (13%)	32 (7%)	15 (3%)	16 (3%)	31 (5%)	83 (10%)	138 (14%)	69 (5%)	94 (6%)
s 55K ⁶	3 (12%)	26 (10%)	89 (21%)	98 (15%)	128 (27%)	80 (18%)	104 (20%)	123 (20%)	60 (9%)	50 (6%)	54 (5%)	103 (7%)	68 (4%)
Total finalised	26	254	419	646	482	454	515	610	659	829	1,017	1,376	1,519

IC REVIEW OUTCOMES (S 55K)

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Varied ⁷	0 (0%)	0 (0%)	3 (3%)	5 (5%)	23 (18%)	19 (24%)	16 (15%)	10 (8%)	4 (7%)	7 (14%)	7 (13%)	10 (10%)	9 (13%)
Affirmed after s 55G ⁸	1 (33%)	18 (69%)	58 (65%)	40 (41%)	53 (41%)	11 (14%)	17 (16%)	9 (7%)	3 (5%)	8 (16%)	6 (11%)	10 (10%)	3 (4%)
Affirmed without s 55G ⁹						28 (35%)	48 (46%)	59 (48%)	16 (27%)	16 (32%)	19 (35%)	47 (46%)	8 (12%)
Set aside ¹⁰	2 (67%)	8 (31%)	28 (31%)	53 (54%)	52 (41%)	22 (28%)	23 (22%)	45 (37%)	37 (62%)	19 (38%)	22 (41%)	36 (35%)	48 (71%)
Total	3	26	89	98	128	80	104	123	60	50	54	103	68

⁴ Finalised under s 55F (review parties reach agreement).

⁵ Finalised under s 54W(b) (AAT review).

⁶ Finalised under s 55K (decision of Information Commissioner).

⁷ Decision under review altered or changed in some way, for example access is refused on the basis of a different exemption as was set out in the decision under review.

⁸ Revised decision under review (s 55G) upheld.

⁹ Decision under review upheld.

¹⁰ Decision under review (including original decision, internal review decision or s 55G decision) was wrong and not the correct/preferable decision.

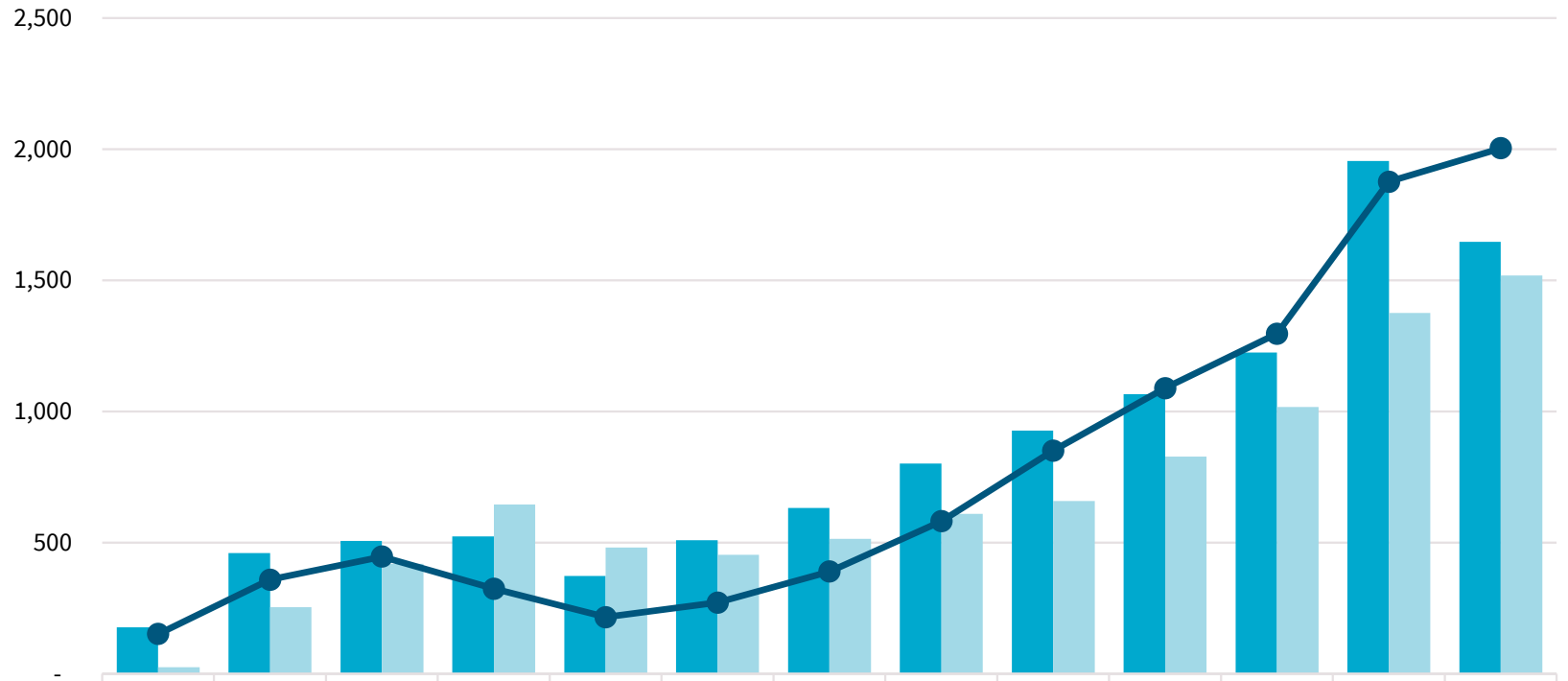
Matters on hand by date received as at 30 June 2023

	Total number of hand at 31 Dec 22	Total number on hand at 31 March 23	IC reviews on hand at 30 June		IC reviews on hand at 29 August
2018	54	39	27		12
2019	241	202	155		148
2020	341	316	285		279
2021	474	461	437		433
2022	892	747	641		619
2023	-	279	459		547
Total	2,002	2,044	2,004		2,038

- Number of IC reviews on hand from 2018: 12
- Number of IC reviews on hand from 2019: 148
- Oldest IC review on hand at **28 August 2023**:
 - Date of receipt: **29-Mar-18**
 - Number of months old: **65.0**

IC reviews on hand

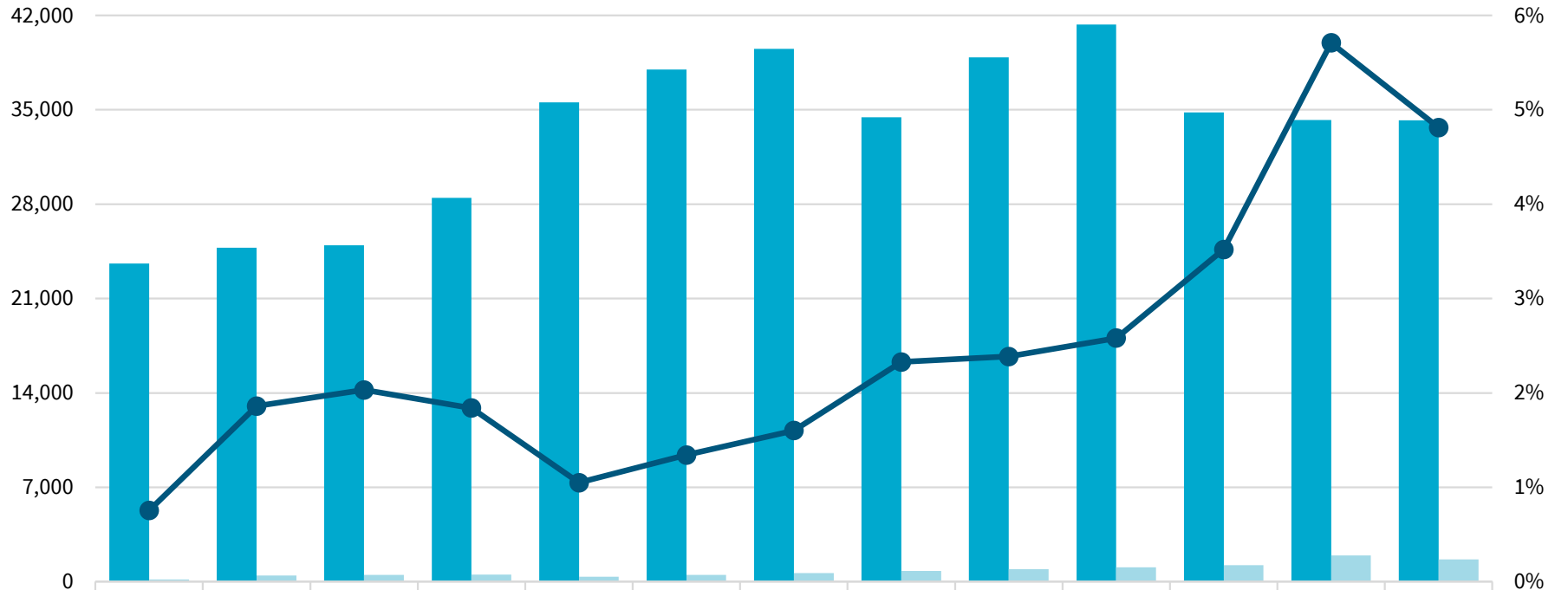
IC reviews on hand



IC reviews received	178	461	507	524	373	510	633	802	928	1,067	1,225	1,955	1,647
IC reviews finalised	26	254	419	646	482	454	515	610	659	829	1,017	1,376	1,519
IC reviews on hand at period close	152	359	447	325	216	272	390	582	851	1,089	1,297	1,876	2,004

IC reviews requests as a percentage of all agency FOI requests received

IC review requests as a percentage of all agency FOI requests received



	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Agency requests received	23,605	24,764	24,944	28,463	35,550	37,996	39,519	34,438	38,879	41,333	34,797	34,236	34,225
IC reviews received	178	461	507	524	373	510	633	802	928	1,067	1,225	1,955	1,647
% of all FOI requests	1%	2%	2%	2%	1%	1%	2%	2%	2%	3%	4%	6%	5%

Version: 1	Cleared by: Rocelle Ago	Action officer: Justin Lodge
Current at: 4/05/23	Phone number: 9942 4205	Action officer number: 02 9942 4163

COMMISSIONER BRIEF**Number 7****Australian Government agency and ministers FOI statistics**

- The OAIC has received media enquiries about Australian government agency and ministerial FOI statistics which we collect and publish in our [annual report](#) and on data.gov.au. The media enquiries have related to delays and agency compliance with statutory timeframes, use of exemptions and the increasing number of access refusal decisions. There have been media coverage of agencies' use of exemptions and delays within the system:
 - In March 2023, the Australia Institute published a [critical media article](#) on lengthy delays undermining the confidence in FOI processes.
 - On 20 March 2023 the [MediaWatch ABC](#) program covered a story with headlines from a Financial Review article of 6 March 2023: '[FOI Commissioner quits, citing lack of power and delays](#)'. The story goes on to reference an email by Paul Farrell, ABC journalist, of 22 March 2023 noting: '*I've lodged more than 500 FOI requests over the last decade and almost every one of them has been a battle. Agencies use every trick in the book to delay, evade, stymie and frustrate access to important government information*'.
 - In 2022, the Centre for Public Integrity published a [report](#) critical of delays and use of exemptions in Australia's FOI system.
- Agencies and ministers are required to submit quarterly and end of year FOI statistics to the OAIC including the number of requests received, on hand and finalised. However, following a change of government a minister may not have access to documents of a former Minister. A question arises about reporting and processing of the 'on hand' or outstanding requests of a former Minister should be reported and managed. See **Com Brief – FOI Change of Government and official documents of a minister**'.

Number of FOI requests received¹

- In 2022-23, 34,225 FOI requests were made to agencies and ministers.
 - This is (essentially) the same as in 2021–22 (when 34,236 requests were received).
 - In 2021-22, there was a 2% decrease in the number of requests compared with 2020-21.
- Some agencies experienced significant decreases in FOI requests in 2022–23, however this was offset by other agencies experiencing significant increases. There was a decrease in the number of requests made to the 'top 20' agencies in 2022–23 (87% of all

¹ Statistics taken from the FOI statistics database for 2022–23 (not yet published in the OAIC Annual Report 2022-23).

requests, compared with 90% in 2021–22) and an increase in requests to the remaining agencies (13% of all requests, compared with 10% in 2012–22).

- The agencies that experienced significant decreases in FOI requests in 2022–23 include the Department of Home Affairs (–11%), the National Disability Insurance Agency (–7%), the Department of Veterans’ Affairs (–11%), the Department of Health and Ageing (–58%), the Australian Securities and Investments Commission (–22%) and the Immigration Assessment Authority (–36%).
- The agencies that experienced significant increases in FOI requests include Services Australia (+11%), the Australian Taxation Office (+40%), the Department of Defence (+57%), the Australian Federal Police (+38%), the Australian Research Council (+4,686%), the Attorney-General’s Department (+53%), the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (+13%) and the Department of the Treasury (+40%).
- The top 20 agencies received essentially the same number of requests for access to personal information as they did in 2021–22 (24,098 compared with 24,207 in 2021–22). However, there was a decrease in non-personal requests to the top 20 agencies (down 10%).
- Of all FOI requests made to agencies and ministers, 74% were for **personal information** (25,235) and 26% for **non-personal information** (8,990). This is the same proportion as in 2021–22. The OAI has previously noted that in 2021–22 there was a smaller proportion of requests for personal information than in previous years and that this was part of a continuing trend of declining requests for personal information (when expressed as a proportion of all FOI requests).

Number of FOI requests decided

- 21,228 FOI requests were decided² in 2022-23.
 - 5,376 FOI requests were granted in full (25% of all requests decided)

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

- a decline on 2021-22, when 39% were granted in full
- there has been a gradual decline in the number of FOI requests granted in full dating back to 2011-12.
- 11, 055 FOI requests were granted in part (52% of all requests decided)³
 - an increase on 2021-22, when it was 42%
- 4,79 FOI requests were refused (23% of all requests decided)
 - an increase on 2020-21, when it was 19%.

Exemptions claimed

- 14,575 of all FOI requests decided involved **exemption claims** (69% of requests decided).
- **Top 6 exemptions (and percentages) 2022–23**

Exemption	Percentage of FOI requests in which exemption applied	Number of times exemption applied
Personal privacy (s 47F)	39%	6,452
Certain operations of agencies (s 47E)	26%	4,209
Documents affecting enforcement of law and protection of public safety (s 37)	7%	1,077
Secrecy provisions of enactments (s 38)	6%	931
Business (s 47G)	5%	864
Deliberative processes (s 47C)	5%	783

Statutory timeframes

- In 2022-23, 74% of all FOI requests were decided within the **statutory timeframe**.

³ In December 2022, the OAIC updated its FOIstats Guide to clarify that if irrelevant matter is deleted from a document before it is released, the outcome of the request is 'granted in part'. Note: when asked whether the new guidance was the reason for increases of the proportion of requests granted in part, many agencies denied this was a relevant factor.

- This is an improvement in timeliness from 2021–22, when 70% of all requests were decided in time, but still represents an overall decline in timeliness from 2020-21 (77%), 2019-20 (79%) and 2018-19 (83%).
- The improvement in timeliness is due to a small increase in the percentage of personal FOI requests decided in time in 2022–23 (50% compared with 48% in 2021–22). However this still means that half of all requests for access to personal information were not decided within statutory timeframes in 2022–23. This negatively impacts the rights of members of the public to access information, including individuals seeking their own personal information.
- Agencies have identified high staff turnover, difficulty recruiting staff (particularly experienced FOI practitioners), onboarding and training of new FOI staff who may be in other geographical locations and increased complexity and volume in the FOI caseload as reasons for the decline in timeliness of decision-making.

- **Timeliness**

Year	% processed within statutory timeframes	< 30 days beyond statutory timeframes	< 60 days beyond statutory timeframes	< 90 days beyond statutory timeframes	90+ days beyond statutory timeframes
2022–23	74%	7%	3%	2%	14%
2021-22	70%	7%	3%	1%	19%
2020-21	77%	6%	2%	2%	12%
2019-20	79%	7%	2%	2%	10%
2018-19	83%	8%	4%	3%	2%

Charges

- There was a 9% decrease in the **amount of charges notified** in 2022-23 compared to the previous year (\$249,666).
- There was a 14% increase in the **amount of charges collected** in 2022-23 compared to the previous year (\$86,080).

Version: 1	Cleared by: Rocelle Ago	Action officer: Raewyn Harlock
Current at: 15/08/2023	Phone number: 02 9942 4205	Action officer number: 02 9297 9425

COMMISSIONER BRIEF

FOI Complaints

Number 8

- In 2022/23, 3 complaint investigations were finalised under s 86 notice on completion. All 3 of these matters included recommendations that Commissioners believe the agency should implement to address identified areas of non-compliance.
 - The most complained about agencies as at 30 June 2023 are:
 - Department of Home Affairs (35)
 - Department of Veterans' Affairs (23)
 - Department of Human Services - Services Australia (19)
 - The issues most commonly raised across each of these agencies are:
 - agencies not meeting statutory timeframes
 - poor customer service
 - concerns regarding the practical refusal consultation process,
 - the imposition or amount of a charge.
 - Other issues raised in complaints include:
 - actions taken by specific individuals in relation to decision making and release of documents, and
 - delay in providing the relevant documents following the notification of the s 26 statement of reasons.
-

Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws

FOI COMPLAINT STATISTICS

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Received	88	126	148	77	31	1	36	62	61	110	152	216	212
Finalised	38	100	149	119	64	0	18	29	22	71	174	223	124
KPI	100%	96%	90%	82%	81%	N/A	100%	83%	82%	52%	82%	74%	94%
Ave time to finalise (months)	2.3	5.4	5.0	7.2	5.8	N/A	3.0	5.9	7.2	11.6	6.8	10.5	4.1
Finalised less than 12 months	38	96	134	98	52	0	18	24	18	37	142	164	116
Finalised more than 12 months	0	4	15	21	12	0	0	5	4	34	32	59	8
On hand end period	50	76	75	33	0	1	19	52	91	130	108	101	189
On hand end period >12 mths	0	8	2	5	0	0	0	4	36	52	69	27	74
On hand end period >24 months	0	0	0	0	0	0	0	0	4	13	33	12	21

FOI COMPLAINT OUTCOMES¹

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
s70 - not in jurisdiction	11	17	25	18	10		2	2	1	4	31	36	49
s73(a)- not exercising power	2	9	1	2	2		2	1					
s73(b) - merits review		4	8	1	5					1	27	54	21
s73(d)(i) - adequately dealt with				22	8		3	3	2			1	
s73(d)(i) - adequately dealt with - pre PV	7	8	7										
s73(d)(ii) - dealing with complaint	2		3	1	1								
s73(e) - frivolous, vexatious, lacking in substance	2	16	23	24	8		3	7	8	6	24	21	1
s73(f) -insufficient interest	1		8										
s74 - referred Ombudsman					1			1			12	7	
Referred								1		4	3		
s86 - no recommendations made	2	10	26	8	16			1		15	1	12	
s86 - recommendations made	1		1	6	1			4		13	2	32	3
Withdrawn/conciliated		2	9	11	4		1	1	2	11	46	28	17
Withdrawn	5	31	31	29	8		8	8	10	19	30	46	33
Total	38	100	149	119	64	N/A	18	29	22	71	174	223	124

¹ One complaint may have multiple issue outcomes, thus the total may not equal the sum of rows.

Matters on hand by date received

Year received	Matters on hand 30 June 2023	Percentage
2019	5	3%
2020	8	4%
2021	34	18%
2022	65	34%
2023	77	41%
Total	189	100%

- Oldest complaint on hand at **30 June 2023**:
 - Date of receipt: **19-Feb-19**
 - Number of months old: 52.3

Version: 1.0	Cleared by: Rocelle Ago	Action officer: Jackie Scolyer
Current at: 11/0/2023	Phone number: 02 9942 4205	Action officer number: 02 9246 0585

COMMISSIONER BRIEF**Number 9****Department of Home Affairs – Compliance with statutory processing timeframes**

- The Department of Home Affairs' ability to meet decision-making statutory timeframes under the FOI Act has been the subject of various investigations, including two Commissioner initiated investigations (CIIs) since the commencement of the OAIC.
- The Information Commissioner's most recent regulatory action against the Department includes a CII into the Department's non-compliance with the statutory processing period when processing FOI requests for non-personal information (See **Appendix A**), and the investigation of a cohort of 17 complaints about the Department's non-compliance with the statutory processing period when processing requests for personal information. (See **Appendix B**). The Department accepted and implemented all of the CII recommendations. The Department's responses in relation to the recommendations for the personal information cohort indicates that it had sought to implement initiatives that it considered would address the issues identified in the investigation completion notices and that it had undertaken the tasks it *had committed* to undertake.
- The OAIC has sought updates of the actions taken by the Department to resolve the issues arising out of the complaint investigations recommendations and increase in IC review applications of deemed access refusal decisions, including the 885 IC review applications of deemed access refusals in 2021-22 and 594 in 2022-3 which appeared to largely involve requests for personal information. The Department has provided the OAIC updates on operational initiatives it has undertaken to supplement its resources, including the increased use of robotic process automation and administrative access. (See **Appendix C** for engagement between OAIC and DHA regarding systemic compliance issues). For further information about deemed access refusals, see **Comm-Brief – IC review of deemed access refusal decisions**.
- To assist in monitoring the impact of the Department's initiatives, the OAIC requested the Department provide statistics relating to the number of requests received, finalised, on hand and overdue on a quarterly basis from 21 April 2023 to 21 January 2024. (See **Appendix D**).
- The Department's quarterly report as at 30 June 2023 provides that at the beginning of the 2022-23 financial year, there were 6,636 requests on hand with 5,665 overdue. As at 30 June 2023, there were 2,358 on hand with 1,499 overdue, representing a 73.5% reduction in the number of overdue requests on hand. The Department advised that 'If current productivity levels are sustained, it can anticipate a manageable caseload by November 2023'. (See **Appendix E** for Department's responses and also **Appendix F** for caseload comparison).
- The [FOI Regulatory Action Policy](#) sets out factors that the Information Commissioner takes into account in deciding whether or not to exercise its enforcement powers in relation to investigations:
 - the objects of the FOI Act

- whether or not the agency or individual has complied with the notice to produce, notice to appear or recommendation
- whether or not the agency or individual has attempted to comply with the notice to produce, notice to appear or recommendation and any reasons given for non-compliance, and
- any other factors the Information Commissioner considers relevant in the circumstances.
- In the context of the personal cohort investigation recommendations, and in considering whether to issue an implementation notice under s 89, the following factors are relevant:
 - The Department's initial and subsequent response to the recommendations, including its advice that it can 'anticipate a manageable caseload' by November 2023 and implementation of specific recommendations relating to operational instructions and training.
 - Departmental initiatives undertaken including additional resources, increased use of robotic process automation and administrative access.
 - The Department's preparedness to continue to make decisions or provide administrative access on overdue requests.
 - The significant reduction of the number of overdue requests.
 - The reduction of incoming IC review applications involving deemed access refusal decisions.
 - The time given to the Department to provide quarterly reports of its caseload (to 21 January 2024).
- These factors must be balanced with:
 - The objects of the Act for functions and powers to be performed and exercised as far as possible to facilitate and promote public access to information, promptly, and at the lowest reasonable cost.
 - The time already given to the Department to address the issues outlined in the completion notices and to implement the initiatives it had seen fit to address such issues.
 - The further time it will take to ensure that all matters are being completed within the statutory processing period.
 - The absence of any detailed action plan by the Department to ensure that it will meet its statutory processing/decision making timeframes.
 - Consideration of the impact of the recommendations on other initiatives the Department is implementing.

It is open to the Information Commissioner to issue an implementation notice under s 89 of the FOI Act, requiring the agency to provide to the Information Commissioner, within a specified timeframe, particulars of any actions the agency will take to implement the Information Commissioner's recommendations. The Information Commissioner may wish to consider this enforcement action following consideration of the Department's 21 October 2023 report, which should provide an indication as to whether any requests will be or remain overdue by 1 November 2023.

- Should the Department fail to respond to the implementation notice within the time specified in the notice or the agency has not taken action that is adequate or appropriate in the circumstances to implement the investigation recommendations, the Information Commissioner may give a written report to the responsible Minister (s 89A)(2)) (the Minister for Home Affairs) and the Minister responsible for the administration of the FOI Act (s 89(3)) (the Attorney-General). The Minister responsible for the FOI Act must table the report before each House of the Parliament (s 89A(5)).
- In considering other regulatory actions available, consideration has also been given to other functions as set out in s 8 of the *Australian Information Commissioner Act 2010*:
 - making reports and recommendations to the Minister about
 - proposals for legislative change to the FOI Act or
 - administrative action necessary or desirable in relation to the operation of the Act (s 8(f)).
 - monitoring, investigating and reporting on compliance by agencies with the FOI Act.
- Consideration could be given issuing a general report on the Department’s compliance with the FOI Act (similar to the report issued on the [Disclosure log desktop review](#)), however there are no specific regulatory consequences that flow on from this particular action.

Version: 1.0	Cleared by: Rocelle Ago	Action officer: Jackie Scolyer
Current at: 17/08/23	Phone number: 02 9942 4205	Action officer number: 02 9246 0585

Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws

Appendix A: Commissioner-initiated investigation into the Department of Home Affairs’ compliance with statutory timeframes for processing FOI requests for non-personal information

Date of notice on completion: 11 December 2020

Outcome: The Department does not have adequate governance and systems of accountability in place to ensure compliance with statutory time frames for processing FOI requests for non-personal information.

1. A greater degree of senior level support and leadership for embedding policies, procedures and systems of accountability for compliance with the statutory processing periods in the FOI Act, would assist the Department in meeting the statutory processing period requirements of the FOI Act.
2. With regard to the Department’s FOI Section:
 - a. Evidence that not all of the staff within the FOI Section are available to assist in the processing of FOI requests for non-personal information which has contributed to delays in processing these FOI requests.
 - b. The policies and processes that the Department has in place for the FOI Section do not address the steps required, both in relation to escalation and finalisation of decisions, where delays are contributed to by business areas of the Department or third parties.
 - c. The policies and processes that the Department has in place for FOI requests for non-personal information do not adequately address use of the provisions of the FOI Act which enable an agency to seek an extension of time in processing FOI requests.
3. With regard to the business areas of the Department:
 - a. The Department has implemented an approach for processing FOI requests for non-personal information that requires significant engagement by the staff in the business areas to which a relevant FOI request relates. The training and resources made available to those staff does not facilitate processing FOI requests within the FOI Act statutory processing periods.
 - b. The Department’s processes for consulting with senior staff, the Department’s Media Operations and Minister’s Office in relation to FOI requests limits the ability of the Department to meet FOI Act statutory processing periods.
4. There are inadequate policies and procedures in place to support compliance with the requirements of section 6C of the FOI Act.

Implementation: The Department has implemented all the recommendations made in relation to the non-personal caseload and has demonstrated a significant improvement in timeliness and quality of decisions (Response received 20 January 2023)

Recommendation	Agency response	Assessment of response
<p>1. Appoint an Information Champion The Information Champion may be supported by an information governance board to provide leadership, oversight and accountability necessary to promote and operationalise compliance by the Department.</p> <p>Due 8 January 2021</p>	<p><u>Provided advice on 6 January 2021:</u></p> <p>The Department will formally appoint First Assistant Secretary, Data Division to be the Department’s Information Champion. This position is already supported by the Department’s information governance board, the Data Governance Council, and regularly reports to senior executives and the Department’s Operations Committee on the Department’s performance under the <i>Freedom of Information Act 1982</i> (FOI Act).</p>	<p>Implemented 6 January 2021</p>
<p>2. Operational Processes and Procedures The Department prepare and implement an operational manual for processing FOI requests for non-personal information to be approved by the Information Champion referred to in Recommendation 1 and at a minimum:</p>	<p><u>Response received 3 May 2021.</u> (Note that the Department provided a corrected version on 4 May 2021 – with the correct date applied (30 April 2021))</p>	<p>Implemented 3 May 2021</p>

Recommendation	Agency response	Assessment of response
<p>(a) specify the steps that will be taken to ensure compliance with statutory processing requirements (as set out in more detail in Part 5),</p> <p>(b) specify the steps that will be taken to ensure compliance with section 6C of the FOI Act and the processes to be adopted to request documents from contracted service providers, and</p> <p>(c) include a short form guidance note to assist business areas in processing FOI requests for non-personal information.</p> <p>Consistent with the requirements of the Information Publication Scheme, the operational manual should be made publicly available by the Department on its website.</p> <p>The steps that will be taken to ensure compliance with section 6C of the FOI Act, as referred to in subparagraph (c), should be replicated in all other policies of the Department which relate to contractual requirements for procurement by the Department.</p> <p>Due 8 April 2021</p>	<p>I'm pleased to advise the Department's new operational manual was approved on Friday by the Information Champion and is now in effect from 30 April 2021. In accordance with the Department's policy and procedure control framework, this is called a Procedural Instruction (PI). The PI is supported by two User Guides, representing the recommended 'short form guidance'. We are of the view the Department has now implemented recommendation 2 from the CII report.</p> <p>... the PI is in effect, but we expect it to be regularly reviewed and updated, particularly as we commence operating in accordance with it. Please let us know if you have any feedback and we can consider this in the context of future updates.</p> <p>...We are of the view the Department has now implemented recommendation 2 from the CII report</p>	
<p>3. Training The Department:</p> <p>(a) undertake and complete training for FOI Section staff and other staff (both decision makers and other staff who assist decision makers), and</p> <p>(b) ensure that online training in processing FOI requests for non-personal information is available to all staff of the Department.</p> <p>New staff joining the FOI Section should be trained within 2 weeks of commencing in the FOI Section.</p>	<p><u>Response on 3 May 2021:</u></p> <p>By way of further update on recommendation 3, we have commenced the development of an e-learning training package aligned with the PI, which we hope to roll out to staff by July.</p> <p><u>Response on 3 August 2021:</u></p> <p>The Department has also made significant progress in implementing Recommendation 3:</p> <ul style="list-style-type: none"> We have delivered training on the new <i>Procedural Instruction for Processing non-personal Freedom of Information requests</i> to all FOI section staff and other significant business areas of the Department with high volume non-personal requests. 	<p>Implemented 20 October 2021</p>

Recommendation	Agency response	Assessment of response
Due 8 July 2021	<ul style="list-style-type: none"> • We are working through final approvals for a new e-Learning package for FOI decision-makers across the Department. The e-Learning package comprises two modules: an overview of the Department’s obligations under the FOI Act; and a more detailed description of how non-personal FOI requests are processed in the Department. The e-Learning package is expected to be available to Home Affairs staff later this month. <p><u>Response on 20 October 2021:</u></p> <p><u>Recommendation 3 Part a (complete):</u></p> <ul style="list-style-type: none"> • On 19, 20, 27 and 29 May 2021, all FOI section staff processing non-personal Freedom of Information (FOI) requests attended training sessions on the new Non-personal FOI PI. • On 28 May, 4 June and 7 June 2021, the FOI section held awareness session for business areas that frequently received FOI requests regarding the implementation of the non-personal FOI PI. • By 29 July 2021, all FOI section staff processing non-personal FOI requests declared that they had read and were implementing the Non-personal FOI PI. <p><u>Recommendation 3 Part b (complete):</u></p> <ul style="list-style-type: none"> • On 7 September 2021, the Department released the Freedom of Information (FOI) eLearning Package. The FOI eLearning Package assists staff to understand their legal requirements when being asked to provide documents, or decide upon the release of documents under the <i>Freedom of Information Act 1982</i> (FOI Act). This training includes two modules: <ul style="list-style-type: none"> Module 1: FOI overview – provides an overview of the Department's obligations under the FOI Act and an outline of the non-personal FOI request process in the Department. Module 2: The Department's process for non-personal FOI requests – this module builds on the information in Module 1 and provides more detail on the Department's process for handling non-personal FOI requests. • On 20 and 21 September 2021, the Department facilitated a training session with the Australian Government for Online Tailored FOI Exemptions and Decision-making course. 20 participants attended this session. Two more AGS lead training courses will be held before the end of the year. • On 28 September 2021, the Department celebrated International Access to Information Day. Our recognition of this day reinforces the role of transparency and accountability in the Department. The Department’s Information Champion, Dr Steve Davies, First Assistant Secretary Data Division and Chief Data Officer was a guest speaker and advocated for being more ‘open by design’. He also used the opportunity to promote the FOI eLearning Package to all attendees. 	

Recommendation	Agency response	Assessment of response
	<ul style="list-style-type: none"> On 30 September 2021, the Department’s Information Champion reviewed the eLearning Package’s completion status, particularly for high-use / frequently requested business areas. He personally sent out tailored messages for decision makers to complete the eLearning Training as soon as possible. As of 8 October 2021, 494 Departmental staff have completed FOI eLearning Package. 	
<p>4. Audit of Compliance The Department undertakes an audit of the processing of FOI requests for non-personal information to assess whether Recommendations 2 and 3 have been implemented and operationalised and whether those actions have been sufficient to address the issues identified in this CII.</p> <p>The audit should be undertaken either by the Department’s internal audit committee or by an external auditor, as determined by the Department.</p> <p>A copy of the audit report is to be provided to the OAIC.</p> <p>Due 8 October 2021</p>	<p>Audit reported received 8 March 2022 – endorsed by Audit and Risk Committee on 16 March 2022:</p> <p>The key finding is that we fully implemented recommendations 2 and 3. Two recommendations for future improvements were made:</p> <ul style="list-style-type: none"> - Consider case management system enhancements - Formalise FOI quality management activities. 	<p>Implemented 8 March 2022</p>



department-of-home
e-affairs-cii-report-i

See CII report: [department-of-home-affairs-cii-report-including-secretary-comments.pdf \(oaic.gov.au\)](https://www.oaic.gov.au/department-of-home-affairs-cii-report-including-secretary-comments.pdf)

Investigation into complaints relating to the Department of Home Affairs' compliance with statutory timeframes for processing FOI requests relating to personal information

Date of notice on completion: 25 November 2021

Outcome: The Department did not comply with the statutory processing period.

Implementation of recommendations

Recommendation	Preliminary response to s 86 notice	Subsequent response (implementation)	Assessment of response
<p>1. The Department prepare and implement an operational manual for processing FOI requests for personal information to be approved by the Information Champion. The operational manual is to include, at a minimum, the steps that will be taken to ensure compliance with statutory processing requirements. Consistent with the requirements of the Information Publication Scheme, the operational manual should be made publicly available by the Department on its website. (Due 28 February 2022)</p>	<p>The Department will finalise development of its Procedural Instruction for processing FOI requests for personal information. The procedural instruction will constitute the 'operational manual'.</p>	<p>2 November 2022: The Procedural Instruction: <i>Processing personal freedom of information requests</i> (the procedural instruction) is finalised and is in use. It is modelled on the non-personal procedural instruction. The Department has completed the task it committed to undertake in response to the <i>Freedom of information complaint investigations – Notice on competition</i>.</p>	<p>Implemented 2 November 2022</p>
<p>2. The Department ascertain the additional resources (human or otherwise) anticipated to be required in order to meet statutory timeframes (taking account of the improvements through implementing recommendation 1) and provide an action plan to meet those requirements. (Due 28 February 2022)</p>	<p>The Department will continue to complement the FOI Section's capacity where it is not detrimental to the Department's other functions to do so. Current strategies include the use of overtime, graduate placements and the redeployment of staff who are temporarily unable to complete their normal duties.</p>	<p>17 December 2021: The Department will continue to complement the FOI Section's capacity where it is not detrimental to the Department's other functions to do so. Current strategies include the use of overtime, graduate placements and the redeployment of staff who are temporarily unable to complete their normal duties.</p> <p>11 March 2022: Since 1 January 2022, the FOI section has complemented its capacity by:</p> <ul style="list-style-type: none"> • Supplying work to four staff from other areas that require alternative work due to COVID-19 impacts • Hosting eight staff completing their graduate program (a 12 week rotation) • Developed an agreement with Rehabilitation and Compensation Management to provide 	<p>Not implemented; it is unclear what additional resources are anticipated to meet statutory timeframes and no detailed action plan was provided apart from general reporting of ongoing and upcoming initiatives.</p>

Recommendation	Preliminary response to s 86 notice	Subsequent response (implementation)	Assessment of response
		<p>alternative work to staff unable to compete normal duties (suitable staff not yet identified)</p> <ul style="list-style-type: none"> • Run overtime • Welcomed three new staff members successful in a whole of agency EOI process • Received responses for a limited RFQ for contractors (labour hire) to assist with preparing decisions. <p>Additionally, we are currently exploring ways to fill vacancies quickly, reducing the amount of time a position is vacant. This includes participating in placing staff from a whole of Data Division recruitment round and exploring merit lists (Home Affairs and other agencies). If OAIC has any active merit lists, could you please let Home Affairs know and we will ask HR to explore the possibility of using your processes to fill similar vacancies here. We are also open to secondment opportunities if OAIC staff would benefit from a time in an agency setting.</p> <p>Finding staff in this environment is challenging - we are competing for talent with current taskforces on flood recovery and the responses to Afghanistan. It is possible staff will shortly be required to assist with the Australian response to events in Ukraine as well.</p> <p>5 September 2022:</p> <p>We recently implemented some changes to streamline FOI decision making.</p> <ul style="list-style-type: none"> • In July 2022, the Department has begun using the powers of the Privacy Act to release personal information at greater scale. This means we can expect to see the volumes of FOI requests decrease, as applicants use this alternative pathway to obtain personal information. 	

Recommendation	Preliminary response to s 86 notice	Subsequent response (implementation)	Assessment of response
		<ul style="list-style-type: none"> • We have automated some FOI registration tasks through the use of Robotic Processing Automation. This is the first use of Robotic Processing Automation in the Department. In a few weeks, my team will offer an information session for OAIC staff interested in learning more about how we are using technology to improve FOI processing and decision making. • The Department restructured its web content and implemented relevant recommendations from OAICs review of disclosure logs. • The Department has completed SES consultation on the <i>Procedural Instruction processing personal Freedom of Information requests</i> and it is going through final clearances. The procedural instruction will address OAIC's recommendation from <i>Freedom of information complaint investigations - Notice on Completion</i>. • I look forward to continuing to engage with you on matters relating to FOI, supplementing the positive working relationship enjoyed by our teams. I would be keen to meet to discuss the Department's innovative approach to the management of the APS' largest FOI caseload. <p>2 November 2022: Since 1 January 2022, the FOI section has complemented its capacity by:</p>	

Recommendation	Preliminary response to s 86 notice	Subsequent response (implementation)	Assessment of response
		<ul style="list-style-type: none"> • Supplying work to staff from other areas that require alternative work due to COVID-19 impacts • Hosting graduate program participants • Developed an agreement with Rehabilitation and Compensation Management to provide alternative work to staff unable to compete normal duties (suitable staff not yet identified) • Run overtime • Used labour hire firms to provide some additional capacity. <p>We are now working with a service provider to provide file support for requests to be finalised under the Privacy Act. This is designed to release resources to focus on decision making.</p> <p>If OAIC has any active merit lists, could you please let Home Affairs know and we will ask HR to explore the possibility of using your processes to fill similar vacancies here. We are also open to secondment opportunities if OAIC staff would benefit from a time in an agency setting.</p> <p>Finding staff in this environment is challenging - we are competing for talent with current taskforces on visa processing (very significant numbers of new staff recruited) and national/democratic resilience.</p> <p>The Department considers this commitment ongoing.</p> <p>20 January 2023¹: The increased productivity in the personal caseload is the result of a number of improvements.</p>	

¹ This is the second improvement related to Recommendation 2 as a result of increased productivity in the personal case load also referred to in Recommendation 1. See Recommendation 3 for third improvement.

Recommendation	Preliminary response to s 86 notice	Subsequent response (implementation)	Assessment of response
		<p>.....Secondly, although additional fulltime FTE was not available for FOI given other operational pressures, creative solutions have boosted the Department's capacity short term and allowed us to focus on resolving the backlog of FOI cases. These solutions include:</p> <ul style="list-style-type: none"> • Approximately 15 contractors that are focussing on resolving requests to access personal information. While this approach comes with a cost and risks, it has allowed delegated departmental staff to process requests in the FOI backlog. • The Department has also utilised staff from graduate programs, law clerks and staff who are unable to resume their normal duties into FOI processing. These staff subsequently take FOI knowledge back into their next roles in the organisation. • Excitingly, the Department is also trialling working with a service provider to provide file support for the personal caseload. It is likely that this arrangement will assist with the management of requests in the future. <p>We have been successful in securing a limited amount of departmental funding to improve our caseload management system to:</p> <ul style="list-style-type: none"> • Assist case officers to follow our processes by including in system workflows • Improve request visibility Reduce administrative overhead. <p>We expect the system improvements to be made by July 2023.</p> <p>23 March 2023:</p> <p>On March 6, the Department of Home Affairs launched a pilot of an administrative access channel to provide members of the public access to statistical</p>	

Recommendation	Preliminary response to s 86 notice	Subsequent response (implementation)	Assessment of response
		<p>information and data. You can find more information about the channel on our website.² In designing the channel, we appreciated the resources of OAIC and in particular Administrative access - Home (oaic.gov.au). This is another example of the Department's commitment to openness and helps provide applicants requesting data the best possible service.</p> <p>As this is a pilot, I have a check in point in three months and the final review at six months. The experience of OAIC would be valued in the process and I would appreciate if any complaints about the pilot received by OAIC could be raised directly with me as a priority.</p> <p>20 June 2023: Regarding the improvements listed in the Department's previous correspondence I can provide the following updates:</p> <ul style="list-style-type: none"> • The enhanced procedural instructions and training packages continue to provide the benefits as per our correspondence in January 2023³. • We continue to use creative solutions to increase processing capacity where additional FTE in APS staffing is unavailable. • In May, we successfully launched a newly designed online form for applicants to apply for access or amendments requests, in conjunction with the first phase of updates to our caseload management system. <ul style="list-style-type: none"> ○ We are tracking the impact of these changes and can advise you on the benefits realised in the coming months 	

² Link [Data requests \(homeaffairs.gov.au\)](https://homeaffairs.gov.au)

³ Added to Recommendation 3

Recommendation	Preliminary response to s 86 notice	Subsequent response (implementation)	Assessment of response
		<p>In addition to these improvements, we have also implemented the following:</p> <ul style="list-style-type: none"> • A pilot of a specific channel for requests for statistics under an administrative arrangement, which will be reviewed in the new financial year to confirm if the arrangements will continue beyond the pilot phase. <ul style="list-style-type: none"> • Since the launch in March 2023, the pilot data channel has received 253 requests and finalised 182 requests. • We have implemented an additional robotic process automation tool (Foibot Emails) to assist our officers to triage emails and ensure they are saved in our filing system. <ul style="list-style-type: none"> • The tool is able to read reference numbers in emails, locate the relevant request in our caseload management system, alert the case officer and file the email. • Since implementation in February, Foibot Emails has assisted to triage and file over 12,000 emails in our section mailboxes saving hours of administrative efforts. 	

Recommendation	Preliminary response to s 86 notice	Subsequent response (implementation)	Assessment of response
<p>3. The Department:</p> <ul style="list-style-type: none"> a. undertake and complete training on the operational manual for FOI Section staff and other staff (both decision makers and other staff who assist decision makers) by 28 March 2022 b. ensure that online training in processing FOI requests for personal information is available to all staff of the Department by 28 March 2022 c. ensure that new staff joining the FOI Section are trained in relation to the operational manual within 2 weeks of commencing in the FOI Section. 	<p>The Department will provide the necessary training to FOI section staff and other staff. The Department will update its current online learning to include material related to requests for personal information. The online training for FOI requests for personal information will be made mandatory for those staff who join the FOI Section and who process requests for personal information.</p>	<p>2 November 2022:</p> <p>Staff in the FOI section have been trained in the procedural instruction. Staff in business areas participated in the creation of the procedural instruction and it is available to them through the intranet and linked to in our Policy Procedures Control Register and directly from FOI pages.</p> <p>Staff have also recently received training in caseload management (including quality assurance for personal and non-personal cases), working with Robotic Process Automation (Foibot) and we are cross training teams to ensure coverage over Christmas.</p> <p>The Department has completed the task it committed to undertake in response to the <i>Freedom of information complaint investigations – Notice on competition</i>.</p>	<p>Partially implemented; it is unclear whether new staff joining the FOI section are trained in relation to the operational manual within 2 weeks of commencing the FOI section.</p>
<p>4. The Department undertake an audit of the processing of FOI requests for personal information to assess whether Recommendations 1, 2 and 3 have been implemented and operationalised and whether those actions have been sufficient to address the issues identified in these complaints. The audit is to be undertaken by either the Department’s internal auditors or by an external auditor, as determined by the Department. A copy of the audit report should be provided to the OAIC. (Due 30 May 2022)</p>	<p>The Department will finalise its audit on the processing of FOI requests for <i>non-personal</i> information. Any recommendations that would apply equally to personal requests as they do to non-personal requests will be taken to apply to personal requests. The Department will refer the decision on the need for a further audit on the processing of personal requests to its Audit Committee for consideration.</p>	<p>2 November 2022:</p> <p>The Department finalised its audit of non-personal requests in March 2022 and provided it to the OAIC. The Department has also now implemented the two recommendations (which applied equally to personal FOI requests).</p> <p>The Department referred the decision on the need for a further audit to the Audit Committee in March 2022. They did not add an audit of personal FOI processing to the forward work plan.</p> <p>FOI section has provided information to the Audit Committee secretariat to inform their meetings in April, June and October 2022.</p> <p>The Department has completed the tasks it committed to undertake in response to the <i>Freedom of information complaint investigations – Notice on competition</i>.</p> <p>20 January 2023:</p>	<p>Not implemented</p>

Recommendation	Preliminary response to s 86 notice	Subsequent response (implementation)	Assessment of response
		<p>Finally, we have implemented the recommendations from the department's internal audit into the non personal caseload and extended these changes to the wider FOI caseload. The audit required us to assess the feasibility of making improvements to our caseload management system and to create a caseload management plan. The caseload management plan includes quality assurance steps and has clarified the roles across the FOI section and the wider department.</p>	

Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws

Appendix C: Engagement between OAIC and DHA regarding systemic compliance issues (from January 2021)

Meetings

Date	Attendees	Summary
16 December 2020	Rocelle Ago, Principal Director OAIC Irene Nicolaou, Director OAIC §47E(d), DHA §47E(d), DHA	<ul style="list-style-type: none"> Discussion about the Department's implementation of the CII recommendations
12 April 2021	Elizabeth Hampton, Deputy Commissioner OAIC Rocelle Ago, Principal Director OAIC Paul Pfitzner, Assistant Secretary DHA	<ul style="list-style-type: none"> Proposed changes to the Department's processes and implementation of the CII recommendations and sought to discuss matters relating to the CII separately.
30 July 2021	Rocelle Ago, Principal Director OAIC Susan McKeag, Assistant Secretary DHA §47E(d), DHA §47E(d), DHA	<ul style="list-style-type: none"> Team/governance CII/complaints Action items: <ul style="list-style-type: none"> DHA to provide update on CII recommendations
12 August 2021	Rocelle Ago, Assistant Commissioner, OAIC Susan McKeag, Assistant Secretary DHA	<ul style="list-style-type: none"> Telephone conversation to acknowledge receipt of the Department's progress update sent to the OAIC via email and seek a revised CII implementation update
10 February 2022	Rocelle Ago, Assistant Commissioner, OAIC and FOI Branch directors Steve Biddle, Assistant Secretary, DHA and DHA staff	<ul style="list-style-type: none"> Discussion about the personal cohort recommendation cases Request clarification from DHA regard 'Noted' rather than 'accepted' (because they couldn't agree in full) Discuss DHA FOI workloads, statistics and strategies being implemented or to be implemented, including feedback and ideas Confirmed finalisation of audit
1 June 2022	Rocelle Ago, Assistant Commissioner, OAIC Irene Nicolaou, Director OAIC Sandra Wavamunno, Director OAIC	<ul style="list-style-type: none"> General discussion of initiatives being implemented
6 June 2022	Leo Hardiman PSM KC, former Freedom of Information Commissioner, OAIC Marc Ablong, Deputy Secretary, DHA Steve Davies, Chief Data Officer, DHA	<ul style="list-style-type: none"> Introductory meeting Discussion of DHA's current workload and strategies that are being implemented or to be implemented
21 October 2022	Leo Hardiman PSM KC, former Freedom of Information Commissioner, OAIC Rocelle Ago, Assistant Commissioner, OAIC Steve Davies, Chief Data Officer, DHA Steve Biddle, Assistant Secretary, DHA	<ul style="list-style-type: none"> Update on caseload and innovations
20 December 2022	Leo Hardiman PSM KC, former Freedom of Information Commissioner, OAIC Pip De Veau, former General Counsel, DHA	<ul style="list-style-type: none"> Introductory meeting Discussion of DHA's current workload and strategies that are being implemented or to be implemented

Correspondence

Date	Correspondence from/to	Summary
6 January 2021	Letter from Michael Pezzullo AO, Secretary of DHA to Commissioner, Angelene Falk, OAIC	Letter from the Department acknowledging CII report, accepted, and confirmed will implement all recommendations made in the report. Provided comments to each of the 4 recommendations made and noted improvements underway for FOI.
28 April 2021	Email from Irene Nicolaou Director, OAIC to s47E(d) , DHA	Email to the Department referring to a telephone conversation with Rocelle Ago, OAIC, of the action taken by the Department to implement the Commissioner's recommendations and seeking an update on the Department's progress in implementing recommendation 2 of the CII which was due to be implemented by 8 April 2021. The email also refers to a teleconference on 16 December 2020 between the OAIC and the Department where the implementation of the recommendations was discussed.
30 April 2021	Email from Paul Pfitzner, DHA to Irene Nicolaou Director, OAIC	Email from the Department acknowledging the OAIC's email and confirmed that a substantive response would be provided by the deadline and updated contact details for the Department.
3 May 2021	Email from Paul Pfitzner, DHA to Irene Nicolaou, Director OAIC and Rocelle Ago, Assistant Commissioner OAIC	Email from the Department providing the OAIC with a copy of the Procedural Instruction and noted that in the Department's view, this satisfied recommendation 2 of the CII. The Department also provided an update in relation to recommendation 3 of the CII, confirming they had commenced development of an e-learning training package aligned with the Procedural Instruction with a view to commencing staff training from July 2021.
4 May 2021	Email from Irene Nicolaou, Director OAIC to Paul Pfitzner, DHA	Email to the Department acknowledging Paul Pfitzner email's and noted that the OAIC would contact the Department if further information was needed.
4 May 2021	Email from Paul Pfitzner, DHA to Irene Nicolaou, Director OAIC	Email from the Department providing a revised Procedural Instruction resent to the OAIC on 4 May 2021 due to a date error in the document.
4 May 2021	Email from Irene Nicolaou, Director OAIC to Paul Pfitzner, DHA	Email to the Department acknowledging email and confirming that the revised version of the Procedural Instruction has been noted on the OAIC's file.
3 August 2021	Email from Susan McKeag, Assistant Secretary DHA to Rocelle Ago, Assistant Commissioner OAIC	Email from the Department providing the OAIC with an update on implementing the CII recommendations. The Department: <ul style="list-style-type: none"> • reconfirmed that it had implemented recommendations 1 and 2 • made significant progress in implementing recommendation 3 which included: <ul style="list-style-type: none"> ○ delivering training on the new Procedural Instruction, and ○ working on final approval of an e-learn package for FOI decision makers across the Department. • on track to meet recommendation 4 and the audit plan for 2021-2022 included an audit of its compliance with the FOI Act in relation to non-personal information which was scheduled for late 2021 or early 2022.
20 October 2021	Email from Steve Biddle, Assistant Secretary DHA to Rocelle Ago, Assistant Commissioner OAIC	Email from the Department providing an update on the actions taken against recommendations 3 and 4 in CII as follows: <ul style="list-style-type: none"> • recommendation 3(a) – complete • recommendation 3(b) – complete • recommendation 4 – ongoing
21 October 2021	Email from Rocelle Ago, Assistant Commissioner OAIC to Steve Biddle, Assistant Secretary DHA	Email to the Department acknowledging the Assistant Secretary's email and noted that the OAIC would contact the Department if further information was needed.
25 November 2021	Letter from Commissioner Falk, OAIC to, Michael Pezzullo AO, Secretary DHA	Letter from Commissioner Falk to the Department containing a s 86 Notice on completion to DHA for the 17 personal complaint cohort making 4 recommendations under s 88 of the FOI Act.

Date	Correspondence from/to	Summary
14 December 2021	Letter from Michael Pezzullo AO, Secretary of DHA to Commissioner, Angelene Falk, OAIC	Letter from the Department acknowledging the s 86 Notice on completion and notes recommendations made. Referred to advice provided to OAIC in June, August and September 2021 of measures underway to improve statutory compliance. Confirmed implementation of a number of recommendations made in CII investigation as at June 2021.
22 December 2021	Email from Irene Nicolaou, Director OAIC to [REDACTED], DHA	Email sent to the Department reconfirming both personal and CII recommendation outcomes and confirmation that a response to recommendation 4 for the CII investigation would be provided to the OAIC by the due date including information about the OAIC publishing the CII outcomes on the FOI Investigations Outcomes summary table on the OAIC's website.
23 December 2021	Email from [REDACTED], DHA to Irene Nicolaou, Director OAIC	Email from the Department confirming it would provide key contacts and regular progress updates to the OAIC in relation the recommendations pertaining to both the personal and CII investigation, specifically recommendation 4 of the CII.
17 January 2022	Email from Irene Nicolaou, Director OAIC to [REDACTED], DHA	Email sent to the Department seeking a progress update in relation to recommendation 4 of the CII.
17 January 2022	Email from [REDACTED], DHA to Irene Nicolaou, Director OAIC	Email from the Department advising that the audit has been completed and the report was going through the clearance process and a copy will be provided to the OAIC once clearance has been completed. The Department noted that the report would not be endorsed by the Audit Committee until March 2022.
27 January 2022	Email from [REDACTED], DHA to Rocelle Ago, Assistant Commissioner OAIC and Irene Nicolaou, Director OAIC	Email from the Department reconfirming the audit has been completed and report is going through the Executive clearance process and a copy cannot be provided to the OAIC by 31 January 2022. The Department noted that it would provide an embargoed report to the OAIC as soon as it could (likely mid-February 2022) and it would be endorsed by the Audit Committee in March 2022.
1 February 2022	Email from Irene Nicolaou, Director OAIC to [REDACTED], DHA	Email to the Department acknowledging the update and proposed timeline and provided information on the OAIC's updated publication of the Outcomes of the investigations summary table on the OAIC's website.
4 February 2022	Phone call from [REDACTED], DHA to Irene Nicolaou, Director OAIC	The OAIC received a telephone call from the Department noting that it did not object to the release of the s 86 Notices but concerned that the release of the document does not coincide with the update of the Outcomes of the investigations summary table on the OAIC's website. DHA noted that in relation to the personal cohort investigation, it does not 'agree' to the recommendations rather, only 'noted' them and agreed to take action in relation to them and this is how it is to be recorded on the Outcomes of the investigations summary table.
11 February 2022	Email from Irene Nicolaou, Director OAIC to [REDACTED], DHA	Email sent to the Department confirming the OAIC is looking forward to receiving a copy of the embargoed audit report by mid-February 2022 and a final copy of the report in March 2022.
8 March 2022	Email from Irene Nicolaou, Director OAIC to [REDACTED], DHA	Email sent to the Department to clarify whether it will provide an embargoed copy of audit in relation to Recommendation 4 for CII and if the Department will provide further response in relation to implementation of recommendations 1 and 2 for the personal cohort investigation.
8 March 2022	Email from [REDACTED], DHA to Rocelle Ago, Assistant Commissioner OAIC and Irene Nicolaou, Director OAIC	Email from the Department providing a copy of the audit report in response to recommendation 4 of the CII and noted key findings that: <ul style="list-style-type: none"> • the Department fully implemented recommendations 2 and 3, and • 2 recommendations for future improvement <ul style="list-style-type: none"> ○ Consider case management system enhancements, and ○ Formalise FOI quality management activities The Department considered that all recommendations from the CII have been implemented.

Date	Correspondence from/to	Summary
9 March 2022	Email from Irene Nicolaou, Director OAIC to [REDACTED], DHA	Email sent to the Department acknowledging the embargoed copy of the audit report in relation to recommendation 4 of the CII and request for a copy of the final report once endorsed by the Audit Committee.
10 March 2022	Email from [REDACTED], DHA to Irene Nicolaou, Director OAIC	Email from the Department on the development of a draft Procedural Instruction for processing FOI requests for personal information and measures put in place as of 1 January 2022 to continue complimenting the FOI's Section capacity.
11 March 2022	Email from Irene Nicolaou, OAIC to [REDACTED], DHA	Email to the Department acknowledging status update email of 11 March 2022.
16 March 2022	Email from Irene Nicolaou, Director OAIC to [REDACTED], DHA	Email from the Department confirming the audit report in relation to recommendation 4 of the CII, has been endorsed by the Audit Committee.
31 May 2022	Email from Irene Nicolaou, Director OAIC to Alice McLean, DHA	Email to the Department confirming agenda for schedule meeting on 1 June 2022; noted Department response to recommendation 4 of personal cohort investigation is outstanding; and the Department's current position to recommendations, particularly recommendations 3 and 4 given Department has previously noted recommendations and not advised it accepts the recommendations.
31 May 2022	Email from [REDACTED], DHA to Irene Nicolaou, Director OAIC	Email from the Department acknowledging the OAIC's email of same date and confirmed that it very happy to talk through its progress and improvements they're making.
31 May 2022	Email from Irene Nicolaou, Director OAIC to [REDACTED], DHA	Email from the OAIC acknowledging the Department's acknowledgement email.
26 August 2022	Email from Irene Nicolaou, Director OAIC to [REDACTED], DHA	Email sent to the Department requesting update on implementation of all personal cohort recommendations by 2 September 2022
5 September 2022	Letter from Steve Biddle, Assistant Secretary DHA to former FOI Commissioner, Hardiman KC PSM, OAIC	Letter from the Department providing an update on challenges faced by the Department and changes implemented to streamline FOI decision making (letter is undated but sent via email on 5 September 2022).
20 September 2022	Email from Rocelle Ago, Assistant Commissioner OAIC to Steve Biddle, Assistant Secretary DHA	Email to the Department acknowledging receipt of its letter sent on 5 September 2022 to the former FOI Commissioner KC PSM, advising that the OAIC will be writing to the Department about its compliance with statutory processing timeframes for FOI requests, including in relation to the number of deemed access refusal applications received by the OAIC and that the OAIC seeks an update in relation to the Department's implementation, or response to, the recommendations made in the personal cohort investigations.
25 October 2022	Letter to Secretary Pezzullo AO from Commissioners Hardiman and Falk	Department's non-compliance with statutory timeframes for processing FOI requests and the impact of this non-compliance on the IC review process (see Appendix C - Attachment 9D).
2 November 2022	Email from Steve Biddle, Assistant Secretary DHA to Rocelle Ago, Assistant Commissioner OAIC	Email from the Department providing an update on the recommendations made in relation to the personal cohort investigations and CII investigation and its subsequent actions (see Appendix B for recommendation-specific responses).
7 November 2022	Letter from Pip de Veau, former General Counsel DHA to Commissioners	Letter from the Department providing an update on number of matters finalised and measures implemented since January 2022 to improve the timeliness of FOI requests.
10 November 2022	Email from Rocelle Ago, Assistant Commissioner OAIC to Steve Biddle, Assistant Secretary DHA	Email to the Department acknowledging receipt of the Department's letter of 5 September 2022.
11 January 2023	Letter from Steve Biddle, Assistant Secretary DHA to Rocelle Ago, Assistant Commissioner OAIC	Letter from the Department requesting the OAIC consider delaying implementation of section 22 reporting interpretation for FOI statistics to allow time for the Department to meet with other agencies and identify operation impacts of s 22 interpretation, including manual interrogation of cases that may be required to assist with reporting.
20 January 2023	Letter from Pip de Veau former General Counsel,	Letter providing an update on the Department's key strategies implemented and current caseload. The Department noted its aim to

Date	Correspondence from/to	Summary
	DHAto Commissioner Falk, OAIC	reach system improvements by July 2023 and manageable on hand caseload by November 2023.
23 March 2023	Email from Steve Biddle, Assistant Secretary DHA to Rocelle Ago, Assistant Commissioner OAIC	Update on compliance with statutory timeframes for FOI requests and launch of administrative access pilot for statistical information and data via an information channel. Request for OAIC feedback. The Department also noted that since January 2022, the number of FOI requests on hand continued to decrease and in 2022-23 financial year (end of February 2023), 12,507 requests had been finalised compared to 7,355 requests in the same period in the 2021-22 financial year.
23 March 2023	Email from Rocelle Ago, Assistant Commissioner OAIC to Steve Biddle, Assistant Secretary DHA	Letter to the Department in response to the email of 23 March 2023 setting out: <ul style="list-style-type: none"> • The OAIC will request specific information from the Department, including the number of open requests on hand. • Feedback regarding pilot, particularly relating to the imposition of charges for data requests and request to discuss.
8 June 2023	Letter from Commissioner Falk, OAIC to Pip de Veau, former General Counsel DHA	Letter to the Department requesting status update on strategies referred to in DHA letter of 20 January 2022 and their impact on the Department's case loads; details for any further strategies or initiatives the Department has undertaken to reduce its caseloads and their impact by November 2023; request quarterly statistics of personal and non-personal cohort FOI requests received, finalised, on hand and overdue to be provided at the time Department's quarterly FOI statistics are due.
20 June 2023	Letter from Steve Biddle, Assistant Secretary DHA to Commissioner Falk, OAIC	Letter from the Department provided an update on DHA's strategies referred to in prior correspondence and impact on caseloads, including further strategies implemented to reduce its caseloads and quarterly statistics on FOI requests. The Department confirmed it anticipates a manageable caseload by November 2023 if its current productivity levels are sustained. The Department also provided FOI stats for Quarter 3 (1 January – 31 March 2023) plus performance stats to provide a fuller picture of its activities in this space.
4 August 2023	Letter from Steve Biddle, DHA to Commissioner Falk, OAIC and Rocelle Ago, Assistant Commissioner OAIC	Letter from the Department provided FOI stats for Quarter 4 (1 April – 30 June 2023) in response to Commissioner Falk's letter of 8 June 2023. The Department also provided further performance stats to provide a fuller picture of the Department's activities and advised it feels confident that, if current productivity levels are sustained it can anticipate a manageable caseload by November 2023 allowing for improvements with statutory timeframes.
21 August 2023	Email from Steve Biddle, DHA to Rocelle Ago, OAIC	Email response to query regarding reasons as to differences in data compared to previous years: <p><i>The Department has used the OAIC's guidance on administrative access to introduce an administrative release process under the Privacy Act. The transition to the process is the primary reason for the differences to the 2022-23 financial year data compared to previous years. This new approach, amongst other business improvements, aids the Department to reduce the large on hand personal caseload allowing for future improvements to timeliness as the caseload becomes less aged.</i></p>



Letter to Secretary
Home Affairs.pdf

See Attachment 9D: Letter to Secretary Pezzulo AO: Department's non-compliance with statutory timeframes for processing FOI requests and the impact of this non-compliance on the IC review process dated 25 October 2022.

Appendix D: Correspondence from Commissioner Falk to the Department requesting FOI statistics



Australian Government

Office of the Australian Information Commissioner

Our reference: REC21/00002 and REC21/00014-REC21/00030

Ms Pip de Veau
General Counsel
Group Manager, Legal Group
Department of Home Affairs

By email: pip.deveau@homeaffairs.gov.au
cc: steve.biddle@homeaffairs.gov.au
foi.reviews@homeaffairs.gov.au

Non-compliance with statutory timeframes under the *Freedom of Information Act 1982*

Dear Ms de Veau

I refer to my letter of 25 October 2022, regarding the Department of Home Affairs' (Department) non-compliance with statutory timeframes under the *Freedom of Information Act 1982* (FOI Act).

Thank you for your response of 20 January 2023 providing an update and advice of actions taken so far to assist to resolve the issues arising out of my investigations into the Department's compliance with statutory timeframes under the FOI Act. I also acknowledge updates provided by the Department via Assistant Secretary Steven Biddle by letters dated 11 January 2023 and email of 23 March 2023.

The Department has outlined its implementation of a number of recommended changes which the Department advises is reducing the number of on hand FOI requests for personal information. I note the Department intends to implement further changes by July 2023, and the predicted decreases in workloads for management of FOI requests for personal information to a manageable caseload by November 2023.

Given the impact on individuals seeking access to documents, the number of overdue requests that the Department has on hand continues to be of concern and requires remediation in order for the Department to meet its statutory processing

obligations and the objectives of the FOI Act. As you are aware, the high number of deemed access refusal decisions by the Department has also resulted in increased applications for IC review being made to the OAIC and has adversely impacted on the OAIC's resources.

Request for Information

In order to assist the OAIC to monitor the Department's compliance with my recommendations and to consider any further action, I request the following information by Friday 23 June 2023:

1. Status updates on the strategies referred to in your letter of 20 January 2023 and their impact on the Department's case load, and
2. Details of any further strategies or initiatives the Department has undertaken to reduce its caseload and their impact.

I also request that the Department provide the following statistics for Quarters 3 and 4 of 2022-2023 and Quarters 1 and 2 of 2023-2024 at the time the Department's Quarterly FOI statistics reports are due:¹

- Number of requests received
- Number of requests finalised
- Number of requests on hand
- Number of requests overdue

It would assist the OAIC if the Department can provide these statistics in table format as outlined in the enclosed Attachment. The Department's statistics should clearly indicate the number and percentage of FOI requests for non-personal information versus FOI requests for personal information that have been received, finalised within

¹ The Department's Quarterly FOI Statistics Reports are due as follows:

- 1 January to 31 March 2023:	21 April 2023
- 1 April to 30 June 2023:	21 July 2023
- 1 July to 30 September 2023:	21 October 2023
- 1 October to 31 December:	21 January 2024

statutory processing periods, the number of requests that are on hand overdue and the number of requests overdue as at each quarterly period identified in the tables.

If you have any questions about this information request, please do not hesitate to contact Rocelle Ago, Assistant Commissioner, Freedom of Information by telephone on (02) 9942 4205 or by email at rocelle.ago@oaic.gov.au.

Yours sincerely



Angelene Falk
Australian Information Commissioner and Privacy Commissioner

8 June 2023

Attachment A: Tables for Statistics

Attachment A: Tables for Statistics

Table 1: Number of FOI requests received in quarterly periods

	Total number of FOI requests for personal information	Percentage of requests for personal information	Total number of FOI requests for non-personal information	Percentage of requests for non-personal information	Total number of FOI requests received
Quarter 3 2022-23: 1 January- 31 March (Due 21 April 2023)					
Quarter 4 2022-23: 1 April-30 June (Due 21 July 2023)					
Quarter 1 2023-24: 1 July-30 September (Due 21 October 2023)					
Quarter 2 2023-24: 1 October- 31 December (Due 21 January 2024)					

Table 2: Number of FOI requests finalised within statutory processing times in quarterly periods

	Total number of requests for personal information finalised	Percentage of FOI requests for personal information finalised	Total number of requests for non-personal information finalised	Percentage of FOI requests for non-personal information finalised	Total number of FOI requests finalised
Quarter 3 2022-23: 1 January-31 March (Due 21 April 2023)					
Quarter 4 2022-23: 1 April-30 June (Due 21 July 2023)					
Quarter 1 2023-24: 1 July-30 September (Due 21 October 2023)					
Quarter 2 2023-24: 1 October-31 December (Due 21 January 2024)					

Table 3: Number of FOI requests on hand in quarterly periods

		Total number of FOI requests for personal on hand	Percentage of requests for personal information on hand	Total number of FOI requests for non-personal on hand	Percentage of requests for non-personal information on hand	Total number of FOI requests on hand
Quarter 3 2022-23: 1 January-31 March (Due 21 April 2023)	Within applicable statutory timeframe					
	Up to 30 days over applicable statutory timeframe					
	31-60 days over applicable statutory timeframe					
	61-90 days over applicable statutory timeframe					
	More than 90 days over applicable statutory timeframe					
Quarter 4 2022-23: 1 April-30 June (Due 21 July 2023)	Within applicable statutory timeframe					
	Up to 30 days over applicable statutory timeframe					
	31-60 days over applicable					



		Total number of FOI requests for personal on hand	Percentage of requests for personal information on hand	Total number of FOI requests for non-personal on hand	Percentage of requests for non-personal information on hand	Total number of FOI requests on hand
	statutory timeframe					
	61-90 days over applicable statutory timeframe					
	More than 90 days over applicable statutory timeframe					
Quarter 1 2023-24: 1 July-30 September (Due 21 October 2023)	Within applicable statutory timeframe					
	Up to 30 days over applicable statutory timeframe					
	31-60 days over applicable statutory timeframe					
	61-90 days over applicable statutory timeframe					
	More than 90 days over applicable statutory timeframe					

		Total number of FOI requests for personal on hand	Percentage of requests for personal information on hand	Total number of FOI requests for non-personal on hand	Percentage of requests for non-personal information on hand	Total number of FOI requests on hand
Quarter 2 2023-24: 1 October-31 December (Due 21 January 2024)	Within applicable statutory timeframe					
	Up to 30 days over applicable statutory timeframe					
	31-60 days over applicable statutory timeframe					
	61-90 days over applicable statutory timeframe					
	More than 90 days over applicable statutory timeframe					

Table 4: Number of FOI requests overdue and not finalised within statutory processing times in quarterly periods

	Total number of requests for personal information overdue	Percentage of requests for personal information overdue	Total number of requests for non-personal information overdue	Percentage of requests for non-personal information overdue	Total number of FOI requests overdue
Quarter 3 2022-23: 1 January-31 March (Due 21 April 2023)					
Quarter 4 2022-23: 1 April-30 June (Due 21 July 2023)					
Quarter 1 2023-24: 1 July-30 September (Due 21 October 2023)					
Quarter 2 2023-24: 1 October-31 December (Due 21 January 2024)					

Appendix E: Department quarterly reports

Department responses	Links
21 June 2023 See Attachment 9B	 Letter - Commissioner Falk f
4 August 2023 See Attachment 9C	 Letter - Commissioner Falk f

Appendix F: the Department's compliance with statutory timeframes for processing FOI requests in relation to both personal and non- personal information

	Decided			Decided in time			% in time		
	Personal	Other	Total	Personal	Other	Total	Personal	Other	Total
Annual FY			-			-			-
2018-19	14944	734	15678	11307	320	11627	75.6	43.5	74.1
2019-20	13258	1518	14776	9203	558	9761	69.4	36.7	66
2020-21	12066	1792	13858	7374	1165	8539	61.11	65.01	61.6
2021-22	9737	1466	11203	3999	999	4998	41.07	68.14	44.6
2022-23	5202	1086	6288	1671	732	2403	32.12	67.4	38.2
Quarterly			-			-			-
Q1			-			-			-
2018-19	4005	127	4132	3744	46	3790	93.4	7.65	91.7
Q1			-			-			-
2019-20	3782	204	3986	3197	110	3307	84.5	53.9	82.9
Q1			-			-			-
2020-21	4284	463	4747	2563	254	2817	59.8	54.8	59.4
Q1			-			-			-
2021-22	2142	489	2631	1031	342	1373	48.1	69.9	52.2
Q1			-			-			-
2022-23	1467	294	1761	551	238	789	37.5	80.9	44.8
Q2			-			-			-
2018-19	3377	196	3573	2597	82	2679	76.9	41.8	75.0
Q2			-			-			-
2019-20	3671	365	4036	2743	92	2835	74.7	25.2	70.2
Q2			-			-			-
2020-21	3063	424	3487	1791	318	2109	58.4	75	60.5
Q2			-			-			-
2021-22	1999	410	2409	778	290	1068	38.9	70.7	44.3
Q2			-			-			-
2022-23	1270	329	1599	390	240	630	30.7	72.9	39.4
Q3			-			-			-
2018-19	3347	176	3523	2013	80	2093	60.1	45.4	59.4
Q3			-			-			-
2019-20	2943	396	3339	1709	136	1845	58.0	34.3	55.2
Q3			-			-			-
2020-21	2504	416	2920	1621	287	1908	64.7	68.9	65.3
Q3			-			-			-
2021-22	2679	290	2969	746	187	933	27.8	64.5	31.4

Q3 2022-23	1102	297	1399	259	195	454	23.5	65.6	32.4
Q4 2018-19	4215	235	4450	2953	112	3065	70.0	47.6	68.9
Q4 2019-20	2862	553	3415	1554	220	1774	54.29	39.8	51.9
Q4 2020-21	2215	489	2704	1399	306	1705	63.1	62.6	63.0
Q4 2021-22	2917	277	3194	1444	180	1624	49.5	65.0	50.8
Q4 2022-23	1363	166	1529	471	59	530	34.5	35.5	34.6



OFFICIAL

Angelene Falk
Australian Information Commissioner
Officer of the Australian Information Commissioner

By email: angelene.falk@oaic.gov.au Cc: rocelle.aqo@oaic.gov.au

Dear Commissioner Falk

Thank you for your letter dated 8 June 2023, I acknowledge your continued interest in the Department of Home Affairs' Freedom of Information (FOI) program including the ongoing improvement initiatives we are implementing. I'm pleased to advise these improvements continue to result in reductions to our FOI backlog size and overdue requests.

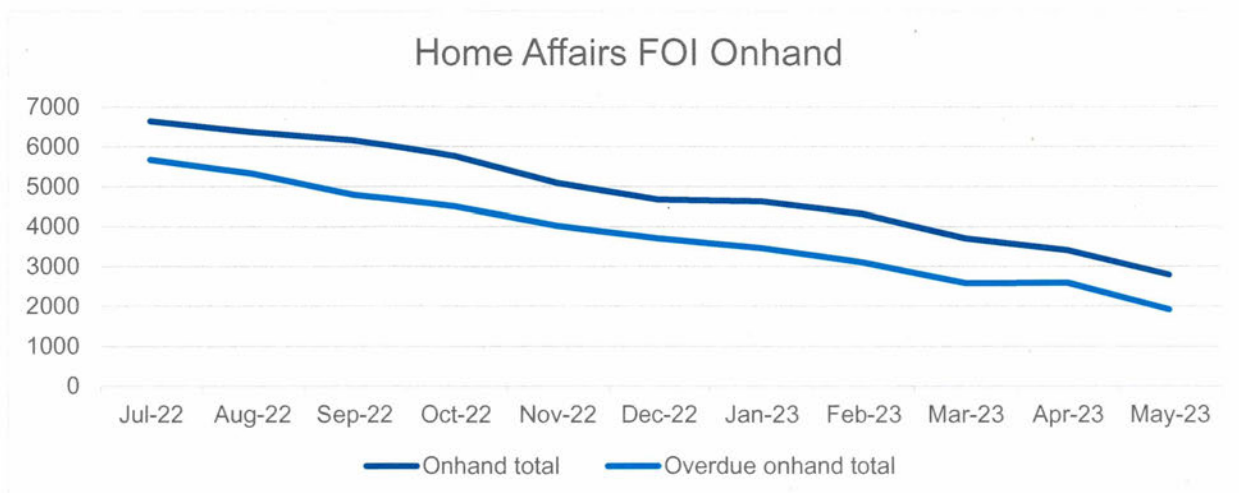
I would like to advise you that Ms Pip de Veau retired from the Public Service on 16 June 2023. Given her retirement I have been asked to respond to your recent correspondence. I would also like to advise that Ms Clare Sharp has commenced in the Legal Group Manager role in the Department from 19 June 2023.

As requested I have attached a table of statistics for Quarter 3 (Q3) 2022-23 (Attachment B). I am concerned the statistics provided in this format may be distorted by the age of the backlog and may not be fully reflective of our improving performance. As such, I've provided further data to provide a fuller picture of the Department's activities in this space (Attachment A).

I can also confirm the Department submitted the return for Q3 in to the OAIC portal on time for normal statistical reporting. I will also provide the additional statistics you requested for future quarters in line with the future due dates you have provided.

I can further advise that, for the 2022-23 financial year up to the end of May 2023, we have finalised 19,091 requests to access or amend information, representing a 60 per cent increase in finalised cases compared to the same period last financial year. In that time period, we have released over 2.6 million pages of information.

This graph depicts the reduction in on hand requests and the number of overdue requests.



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At the beginning of this financial year (1 July 2022) there were 6,636 requests on hand (5,665 overdue) and at the end of May 2023 this number was 2,784 (1,908 overdue). If current productivity levels are sustained we continue to anticipate a manageable caseload by November 2023, as per our last correspondence. Once the caseload is at that manageable level, we also we also anticipate improved sustained performance against the statutory timeframes for the personal FOI caseload.

This reduction in the backlog has continue to be achieved while maintaining the previously implemented measures in the non-personal caseload which finalised 79 per cent of requests in time (as at end of May 2023).

Regarding the improvements listed in the Department's previous correspondence I can provide the following updates:

- The enhanced procedural instructions and training packages continue to provide the benefits as per our correspondence in January 2023.
- We continue to use creative solutions to increase processing capacity where additional FTE in APS staffing is unavailable.
- In May, we successfully launched a newly designed online form for applicants to apply for access or amendments requests, in conjunction with the first phase of updates to our caseload management system.
 - o We are tracking the impact of these changes and can advise you on the benefits realised in the coming months.

In addition to these improvements, we have also implemented the following:

- A pilot of a specific channel for requests for statistics under an administrative arrangement, which will be reviewed in the new financial year to confirm if the arrangements will continue beyond the pilot phase.
 - o Since the launch in March 2023, the pilot data channel has received 253 requests and finalised 182 requests.
- We have implemented an additional robotic process automation tool (Foibot Emails) to assist our officers to triage emails and ensure they are saved in our filing system.
 - o The tool is able to read reference numbers in emails, locate the relevant request in our caseload management system, alert the case officer and file the email.
 - o Since implementation in February, Foibot Emails has assisted to triage and file over 12,000 emails in our section mailboxes saving hours of administrative efforts.

I look forward to sharing our further insights in to our caseload with you in the coming financial year.

Yours sincerely

s47E(d)

Steven Biddle
Assistant Secretary,
Privacy, FOI and Records Management

20 June 2023

Attachment A: Home Affairs performance statistics

Attachment B: OAIC Requested statistics

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Attachment B: OAIC Requested statistics

Note: These figures include only FOI access requests, so excludes amendment requests and requests that were registered and processed under the Privacy Act.

TABLE 1: Number of FOI requests received in quarterly periods

	Total # of FOI requests for personal information	Percentage of FOI requests for personal information	Total # of FOI requests for non-personal information	Percentage of requests for non-personal information	Total # of FOI requests received
Quarter 3 1 January - 31 March Due 21 April 2023	3,121	88.35%	451	11.65%	3,572

Each percentage was calculated as a percentage of the total received for example the percentage of requests for personal information received is expressed as a percentage of the total received.

TABLE 2: Number of FOI requests finalised within statutory processing times in quarterly periods

	Total # of FOI requests for personal information finalised	Percentage of FOI requests for personal information finalised	Total # of FOI requests for non-personal information finalised	Percentage of FOI requests for non-personal information finalised	Total # of FOI requests finalised
Quarter 3 1 January - 31 March Due 21 April 2023	1,313	78.91%	351	21.09%	1,664

These figures are the total finalised within statutory processing times not total finalised.

Each percentage was calculated as a percentage of the total finalised in time, for example the percentage of requests for personal information finalised in time is expressed as a percentage of the total finalised in time.

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TABLE 3: Number of FOI requests on hand in quarterly periods

		Total # of FOI requests for personal on hand	Percentage of FOI requests for personal requests on hand	Total # of FOI requests for non-personal on hand	Percentage of requests for non-personal requests on hand	Total number of FOI requests on hand
Quarter 3 1 January - 31 March Due 21 April 2023	Within timeframe	908	89.68%	116	10.32%	1,024
	Up to 30 days over applicable statutory timeframe	420	89.87%	48	10.13%	468
	31 - 60 days over applicable statutory timeframe	518	98.30%	9	1.70%	527
	61 - 90 days over applicable statutory timeframe	463	99.78%	1	0.22%	464
	More than 90 days over applicable statutory timeframe	1,103	99.73%	3	0.27%	1,106

Each percentage was calculated as a percentage of the total on hand in the age category, for example the percentage of requests for personal information on hand is expressed as a percentage of the total on hand of that age.

TABLE 4: Number of FOI requests overdue and not finalised within statutory processing times in quarterly periods

	Total # of requests for personal information overdue	Percentage of requests for personal information overdue	Total # of requests for non-personal information overdue	Percentage of requests for non-personal information overdue	Total # of FOI requests overdue
Quarter 3 1 January - 31 March Due 21 April 2023	2,504	97.65%	61	2.37%	2,565

Each percentage was calculated as a percentage of the total overdue for example the percentage of requests for personal information overdue is expressed as a percentage of the total overdue.



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Angelene Falk
Australian Information Commissioner
Officer of the Australian Information Commissioner

By email: angelene.falk@oaic.gov.au Cc: rocelle.aqo@oaic.gov.au

Dear Commissioner Falk

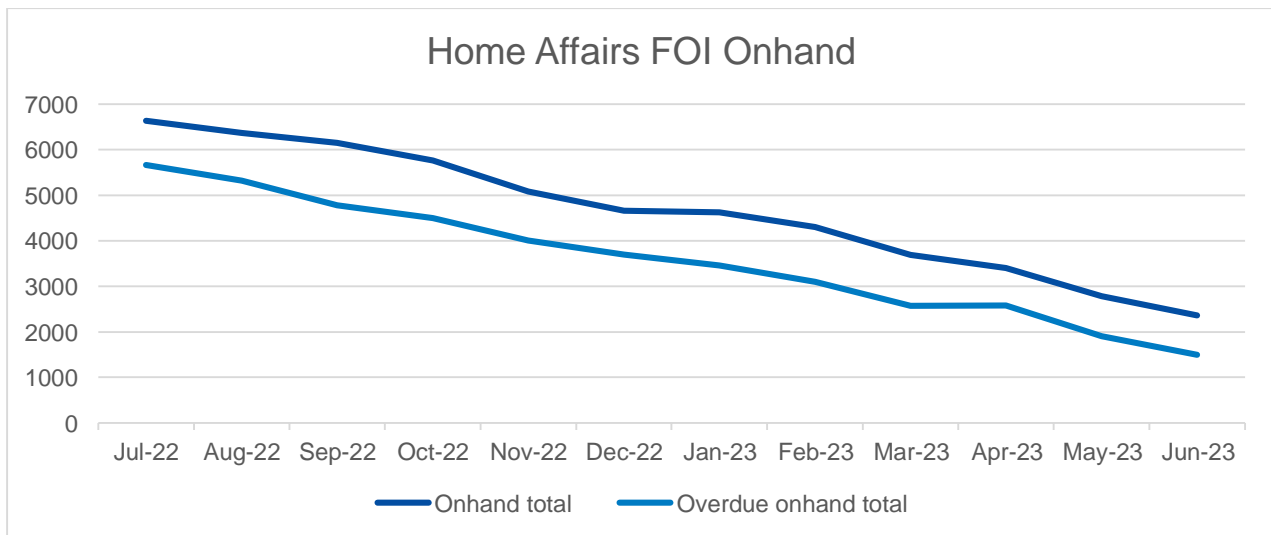
As requested in your correspondence of 8 June, I write to provide the data you requested for Quarter 4 in line with the data previously provided in Quarter (see Attachment B).

As per my correspondence on 21 June, I am concerned the statistics provided in this format may be distorted by the age of the backlog and may not be fully reflective of our improving performance. As such, I've provided further data to provide a fuller picture of the Department's activities in this space (Attachment A).

I can also confirm the Department submitted the return for Q4 in to the OAIC portal on time for normal statistical reporting and the annual data is being compiled currently to be submitted in to the portal.

I can further advise that, for the 2022-23 financial year, we have finalised 20,949 requests to access or amend information, representing a 52.6 per cent increase in finalised request compared to last financial year. Over the financial year, we have released almost 3 million pages of information.

This graph depicts the reduction in on hand requests and the number of overdue requests.



At the beginning of this financial year (1 July 2022) there were 6,636 requests on hand (5,665 overdue) and at the end of the year this number was 2,358 (1,499 overdue), representing a 73.5 per cent reduction in the number of overdue requests on hand.

I continue to feel confident that, if current productivity levels are sustained we can anticipate a manageable caseload by November 2023 allowing for improvements to the compliance with statutory timeframes.

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As per my previous correspondence our business improvement projects continue to progress well and I look forward to sharing our further insights in to our caseload with you in this financial year.

Yours sincerely

s47E(d)

Steven Biddle
Assistant Secretary,
Privacy, FOI and Records Management

4 August 2023

Attachment A: Home Affairs performance statistics

Attachment B: OAIC Requested statistics

Attachment A: Home Affairs performance statistics

	FY 2021-2022	FY2022-2023
Requests received		
Total	15,893	16,864
Personal FOI	12,799	11,334
Non Personal FOI	1,853	1,761
Privacy Act (registered)	48	2,641
Amendments	1,193	1,128
Requests finalised		
Total	13,905	20,949
Personal FOI	10,679	*15,329
Non Personal FOI	1,975	1,898
Privacy Act (registered)	85	2,579
Amendments	1,166	1,143
*This figure includes 9,390 FOI withdrawals where information was provided under the Privacy Act in consultation with the applicant.		
Finalisations made in-time		
Total	50%	48%
Personal FOI ¹	42%	34%
Non Personal FOI	71%	78%
Privacy Act (registered)	Not available	89%
Amendments	91%	86%

¹ These numbers are inclusive of backlog cases and this is impacting the proportion done in time as old cases are finalized.

Attachment B: OAIC Requested statistics

Note: These figures include only FOI access requests, so excludes amendment requests and requests that were registered and processed under the Privacy Act.

TABLE 1: Number of FOI requests received in quarterly periods

	Total # of FOI requests for personal information	Percentage of FOI requests for personal information	Total # of FOI requests for non-personal information	Percentage of requests for non-personal information	Total # of FOI requests received
Quarter 3 1 January - 31 March Due 21 April 2023	3,121	88.35%	451	11.65%	3,572
Quarter 4 1 April – 30 June Due 21 July 2023	2809	94.80%	154	5.20%	2,963

Each percentage was calculated as a percentage of the total received for example the percentage of requests for personal information received is expressed as a percentage of the total received.

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TABLE 2: Number of FOI requests finalised within statutory processing times in quarterly periods

	Total # of FOI requests for personal information finalised	Percentage of FOI requests for personal information finalised	Total # of FOI requests for non-personal information finalised	Percentage of FOI requests for non-personal information finalised	Total # of FOI requests finalised
Quarter 3 1 January - 31 March Due 21 April 2023	1,313	78.91%	351	21.09%	1,664
Quarter 4 1 April – 30 June Due 21 July 2023	1,679	92.87%	129	7.13%	1808

These figures are the total finalised within statutory processing times not total finalised.

Each percentage was calculated as a percentage of the total finalised in time, for example the percentage of requests for personal information finalised in time is expressed as a percentage of the total finalised in time.

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TABLE 3: Number of FOI requests on hand in quarterly periods

		Total # of FOI requests for personal on hand	Percentage of FOI requests for personal requests on hand	Total # of FOI requests for non-personal on hand	Percentage of requests for non-personal requests on hand	Total number of FOI requests on hand
Quarter 3 1 January - 31 March Due 21 April 2023	Within timeframe	908	89.68%	116	10.32%	1,024
	Up to 30 days over applicable statutory timeframe	420	89.87%	48	10.13%	468
	31 - 60 days over applicable statutory timeframe	518	98.30%	9	1.70%	527
	61 - 90 days over applicable statutory timeframe	463	99.78%	1	0.22%	464
	More than 90 days over applicable statutory timeframe	1,103	99.73%	3	0.27%	1,106
Quarter 4 1 April – 30 June Due 21 July 2023	Within timeframe	735	92.45%	60	7.55%	795
	Up to 30 days over applicable statutory timeframe	275	96.49%	10	3.51%	285
	31 - 60 days over applicable statutory timeframe	133	95.00%	7	5.00%	140
	61 - 90 days over applicable statutory timeframe	218	99.09%	2	0.91%	220

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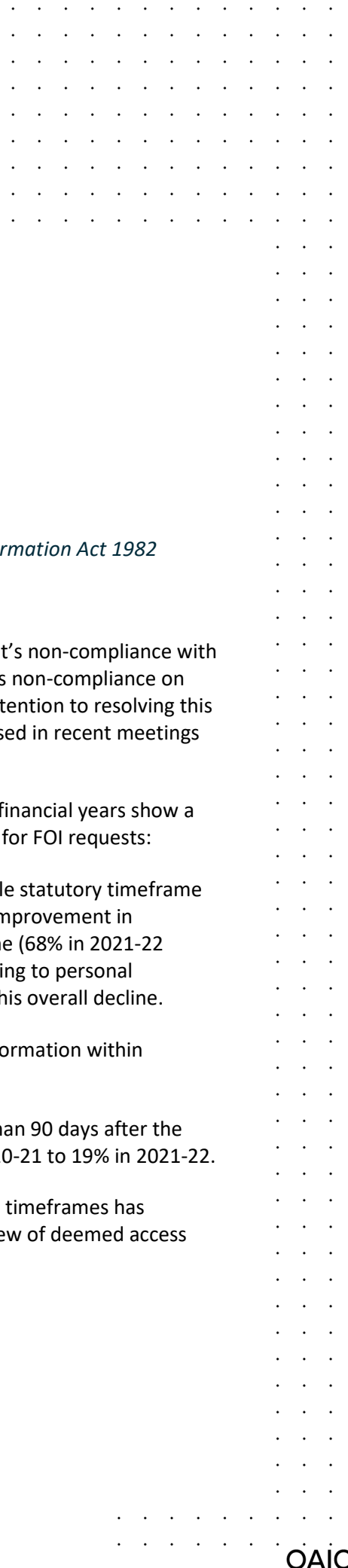
	More than 90 days over applicable statutory timeframe	841	99.88%	1	0.12%	842
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Each percentage was calculated as a percentage of the total on hand in the age category, for example the percentage of requests for personal information on hand is expressed as a percentage of the total on hand of that age.

TABLE 4: Number of FOI requests overdue and not finalised within statutory processing times in quarterly periods

	Total # of requests for personal information overdue	Percentage of requests for personal information overdue	Total # of requests for non-personal information overdue	Percentage of requests for non-personal information overdue	Total # of FOI requests overdue
Quarter 3 1 January - 31 March Due 21 April 2023	2,504	97.65%	61	2.37%	2,565
Quarter 4 1 April – 30 June Due 21 July 2023	1,467	98.66%	20	1.34%	1,487

Each percentage was calculated as a percentage of the total overdue for example the percentage of requests for personal information overdue is expressed as a percentage of the total overdue.



Our reference: D2022/019475

Mr Michael Pezzullo AO
Secretary
Department of Home Affairs

By email: Michael.Pezzullo@homeaffairs.gov.au
cc: [s47E\(d\)@homeaffairs.gov.au](mailto:s47E(d)@homeaffairs.gov.au)
Steven.Davies@homeaffairs.gov.au
Steve.Biddle@homeaffairs.gov.au
foi.reviews@homeaffairs.gov.au

Non-compliance with statutory timeframes under the *Freedom of Information Act 1982*

Dear Secretary Pezzullo,

We are writing to provide you with information about your Department’s non-compliance with statutory timeframes for processing FOI requests and the impact of this non-compliance on the Information Commissioner (IC) review process. We request your attention to resolving this non-compliance as a matter of priority. These issues have been discussed in recent meetings of your SES staff with the Freedom of Information Commissioner.

The annual FOI statistics reported by the Department for the past two financial years show a significant decline in compliance with statutory processing timeframes for FOI requests:

- The Department processed 45% of FOI requests within the applicable statutory timeframe in 2021-22 compared with 62% in 2020-21. While there was some improvement in processing requests relating to non-personal information within time (68% in 2021-22 compared with 65% in 2020-21), the large number of requests relating to personal information which were not processed within time has resulted in this overall decline.
- The Department decided 41% of FOI requests involving personal information within statutory timeframes in 2021-22 compared with 61% in 2020–21.
- The percentage of FOI requests decided by the Department more than 90 days after the expiry of the statutory processing period increased from 12% in 2020-21 to 19% in 2021-22.

The Department’s failure to meet applicable statutory decision-making timeframes has resulted in a significant and ongoing increase in applications for IC review of deemed access refusal decisions involving the Department:

- In 2021-22, we received 1,022 IC review applications in which the Department was the respondent.
- Of these, 885, or 87%, involved deemed access refusal decisions attributable to the Department.

We are currently receiving an average of 24 applications per week for IC review of deemed access refusal decisions attributable to the Department. We are having to devote our limited resources to managing these applications as part of our broader process for the triage and early resolution of IC review applications and are concerned that the volume is set to increase. We are also concerned that access to information is being delayed for applicants. In the majority of cases following our intervention, the Department is providing full or partial access to the documents requested by an applicant.

We understand that the Department currently has close to 5,000 overdue FOI requests for personal information on hand indicating a continuing, and possibly increasing, inflow of IC review applications relating to the Department's deemed access refusal decisions.

We have implemented a process to encourage the Department to make prompt decisions in relation to access requests which are the subject of deemed refusal decisions and subsequent IC review applications. We remain open to discussing with officers of the Department ways in which compliance with timeframes, and reduction of IC review applications relating to deemed access refusal decisions, can be achieved.

However, in the interests of the Department's compliance with its statutory obligations and the efficient administration of the Commonwealth FOI system more broadly, we request your attention to resolving the Department's non-compliance with applicable statutory timeframes as a matter of priority.



Angelene Falk
Australian Information Commissioner and
Privacy Commissioner
12 September 2023



Leo Hardiman
Freedom of Information Commissioner PSM KC
12 September 2023

COMMISSIONER BRIEF**Number 10****FOI - Change of government and official documents of a Minister**

- Following the May 2022 election, the OAIC has been progressing a cohort of 48 IC reviews impacted by the change of government ('change of government cohort').
- In these IC reviews, there has been a change in Minister in the course of the IC review. The new Minister from a different government has become the respondent.
- Of the 48 IC reviews, 47 have been resolved and 1 remains open.
- The Australian Information Commissioner's decision in *Rex Patrick and Attorney-General (Freedom of information)* [2023] AICmr 9 (28 February 2023), which concerns an IC review in the context of a change of government, is currently the subject of Federal Court proceedings in *Rex Lyall Patrick v Attorney General of the Commonwealth of Australia* (SAD40/2023) (Patrick Federal Court proceeding).
- The remaining IC review will likely proceed to an IC decision under s 55K of the FOI Act once the outcome of the abovementioned Patrick Federal Court proceeding is known.
- The OAIC has received enquiries raising the issue of statistical reporting under the *Freedom of Information Act 1982* (FOI Act) by ministerial offices concerning Freedom of Information (FOI) requests made to former Ministers.

Key Points

- Following the May 2022 election, the OAIC has been progressing a change of government cohort where there has been a change in ministerial office holder in the course of the IC review, and the new Minister (from a different government) has become the respondent.
- The OAIC's long established position where there has been a change of government is that for the purposes of an IC review:
 - an IC review application does not automatically cease when the individual who holds a ministerial office changes (whether the change occurs by way of machinery of government change within the term of

Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws

government or, alternatively, as a result of a change of government following an election)

- if any relevant document is not in the possession of the new Minister, then it is no longer an ‘official document of a Minister’ (s 4(1) of the FOI Act) to which the mandatory access rule in s 11A(3) applies
 - any relevant document in the possession of the Information Commissioner is not an ‘official document of a Minister’ to which the mandatory access rule in s 11A(3) applies. The FOI Act places restrictions on what the Information Commissioner may do with the copy of the relevant document they hold and the Act does not make provision for, or otherwise contemplate, the unilateral transfer by the Information Commissioner of possession of any relevant document to the current Minister,¹ and
 - the new Minister is not required to provide access to any relevant document.
- The Australian Information Commissioner considered this issue in *Rex Patrick and Attorney-General (Freedom of information)* [2023] AICmr 9 (28 February 2023), which involved a request for a letter of advice from the former Attorney-General to the former Prime Minister regarding the Auditor-General’s report into the administration of the Community Sport Infrastructure Grant Program. The Information Commissioner found that the current Attorney-General was not in possession of the document at issue and that for the purpose of the IC review, any relevant document is no longer ‘an official document of a Minister’ to which the mandatory access rule under s 11A(3) of the FOI Act applies. This Information Commissioner decision is the subject of the Patrick Federal Court proceeding.

¹ See MR20/00019 also, ss 55L and 55T of the FOI Act.

Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws

- The remaining IC review is currently on hold pending the outcome of the abovementioned Patrick Federal Court proceeding.
- The OAIC has received enquiries raising the issue of statistical reporting under the FOI Act by ministerial offices concerning FOI requests made to former Ministers. The OAIC's current position on this issue is that consistent with the communication and published guidance, the current position will be maintained pending the decision in the Patrick Federal Court proceeding.

IC reviews - summary

- Of the 48 IC reviews in the change of government cohort:
 - 47 IC reviews have been finalised, and
 - 1 IC review is currently on hold pending the outcome of the abovementioned Patrick Federal Court proceeding.
- 1 IC decision was made by the Australian Information Commissioner under s 55K of the FOI Act:
 - *Rex Patrick and Attorney-General (Freedom of information)* [2023] AICmr 9 (28 February 2023)
- 5 IC decisions were made by the former Freedom of Information Commissioner Leo Hardiman KC PSM under s 55K of the FOI Act:
 - *'ACY' and Attorney-General (Freedom of information)* [2023] AICmr 7 (22 February 2023)
 - *Paul Farrell and Prime Minister of Australia (Freedom of information)* [2023] AICmr 32 (11 May 2023)
 - *Paul Farrell and Prime Minister of Australia (No. 2) (Freedom of information)* [2023] AICmr 33 (11 May 2023)
 - *'ADK' and the Treasurer (Freedom of Information)* [2023] AICmr 35 (17 May 2023)

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- *'ADL' and Attorney-General (Freedom of Information) [2023] AICmr 36*
(17 May 2023)
- In these IC decisions, the respective Commissioners varied the Ministers' decisions on the basis that:
 - the documents at issue are not in the possession of the current Minister, either in an ordinary sense or in the deemed sense referred to in the definition of 'official document of a Minister or official document of the Minister' in s 4(1) of the FOI Act
 - as the current Minister does not have possession of the documents at issue, any documents relevant to the IC review, to the extent they exist, are no longer 'official documents of a Minister', and
 - concluded that the mandatory access rule in s 11A(3) of the FOI Act does not apply and the current Minister is not required to provide access to the documents at issue.

IC reviews – summary table

IC reviews – finalised	<u>Total IC reviews</u>
IC review withdrawn by applicant	31
IC declined to undertake/continue to undertake IC review under s 54W(a)(i) of the FOI Act	10
IC Decisions made under s 55K of the FOI Act	6
Total finalised	47
IC reviews - open	
On hold pending the outcome of the Patrick Federal Court proceeding	1
Total open	1
Total IC reviews	48

Impact of a change of government on FOI statistical reporting

- The OAIC has received requests in relation to the OAIC's requirement that ministerial offices report statistics on requests made to former governments. These requests were asking the OAIC to reconsider its position about reporting FOI statistics in this context.
- Some agencies' are of the view that a current Minister does not have an obligation to report a former Minister's FOI request on the basis that a document of a former Minister is not considered 'an official document of a Minister' (s 4(1) of the FOI Act).
- The OAIC's position is that FOI requests are attached to the Ministerial title, not to the individual holding that title, and the OAIC's current guidance in the FOI Stats Guide should be maintained, ensuring consistency in approach across statistical returns, allowing for appropriate benchmarking across historical datasets see: FOI Stats guide and FOI Guidelines at [2.52].
- The Information Contact Officers Network (ICON) alert dated 21 June 2023 acknowledged questions about how Minister's FOI statistics are reported following a change of government and advised that while the OAIC is actively considering these issues, agencies should continue to submit FOI statistical reports based on the guidance set out in the FOI Stats guide. The FOI statistics database provides a separate 'Comments' section where relevant commentary can also be included. This section is published, along with the raw data provided, on the FOI Statistics page on data.gov.au.
- The OAIC will have regard to the decision of the Federal Court in the Patrick Federal Court proceeding once handed down and if required will revise its FOI Stats Guide as well as any instructions to agencies.

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COMMISSIONER BRIEF**Number 11****FOI Monitoring, Guidance, Engagement and Information Publication Scheme**

- The OAIC monitors agencies' compliance with the FOI Act, particularly compliance with statutory timeframes.
- The OAIC engages widely with information access practitioners across Australia and overseas.
- Current areas of focus include:
 - review of the Information Publication Scheme (IPS) and agencies compliance with the IPS – conducted every 5 years (s 8F and s 9 of the FOI Act).
 - ensuring proactive publication of government held information and encouraging practices that are 'open by design'
 - producing and revising resources and guidance material to assist FOI applicants, ministers and government agencies to engage positively with the FOI Act,
 - reviewing and updating the following chapters of the FOI guidelines as per s 93A of the FOI Act
 - Part 3 (Processing)
 - Part 5 (Exemptions)
 - Part 6 (Conditional Exemptions)
 - Part 13 (Information Publication Scheme)
 - reviewing and updating the Information Commissioner (IC) review procedure directions made under s 55(2)(e)(ii) of the FOI Act.
 - producing Guidance to agencies and ministers' offices on processing of FOI requests and transfer of requests under s 16 - arrangements between agencies and ministers – assessing and incorporating agency comments.

Key Points**Education and Guidance**

- The OAIC holds regular information sessions and issues quarterly newsletters for FOI practitioners, for example:
 - **Information Contact Officer Network (ICON)** forum held on 28 September 2022 where the Attorney-General and Cabinet Secretary, the Honourable Mark Dreyfus KC MP and Director-General of National Archives of Australia, Simon Froude, recognised the importance of the community's right to know and to access to government-held information and the great work done by the Australian Information Access Commissioners and Ombudsmen to develop the [Open by Design Principles](#).

- **FOI Statistics information session** held virtually on 6 July 2023 to support agencies reporting statistics to the OAIC under FOI Act requirements.
- FOI information sessions for micro and extra small agencies on 27 October 2022 and Agency roundtable sessions held on 16 November and 6 December 2022.
- 1 December 2022 marked 40 years of the FOI Act with the FOI Commissioner marking the occasion at the ICON forum and recognising the significant achievements of FOI practitioners processing and finalising decisions on around 25,000 requests during 2022.
- The OAIC continues to develop **guidance** for agencies and FOI applicants:
 - new draft guidance for ministers, ministerial staff and agencies assisting ministers on managing FOI requests. Agencies' comments have been considered and incorporated into the final draft currently being reviewed
 - updates to the FOI Guidelines: Part 14 (Disclosure Log), following a disclosure log desktop review and Part 10 (Review by the Information Commissioner)
 - completed public consultations on proposed updates to the FOI Guidelines, including Parts 5 (Exemptions) and Part 13 (Information Publication Scheme). We will consult on proposed revisions to Part 6 (Conditional exemptions) shortly.
 - revised directions made under s 55(2)(e)(ii) of the FOI Act in relation to procedures to be followed in IC reviews. The OAIC has consulted on proposed revisions to the 2 existing procedure directions (one for agencies and ministers, and one for IC review applicants). The revised directions aim to facilitate greater engagement between applicants and respondent agencies and ministers during the IC review with a view to more timely and cost-effective resolutions.

Information Publication Scheme

- The FOI Act includes proactive publication mechanisms such as the Information Publication Scheme (IPS) and disclosure log requirements, that reduce the need for formal access requests.

- We have reviewed our guidance on the IPS (Part 13 of the FOI Guidelines) to give greater clarity to agencies on its purpose and scope.
- The revised draft guidelines clarify the:
 - the types of information that can be released and in what format and
 - the overlap between IPS requirements and other proactive publication schemes.
- Consultation on a draft of the revised guidelines closed on 24 February 2023, with copies of agency submissions available on our website. Updated guidance will be published on our website in August 2023 and will be communicated to FOI practitioners and agencies.
- We are preparing the next statutory review of the IPS under s 9 of the FOI Act. We have commissioned ORIMA Research to conduct a third survey of Australian Government agencies' compliance with IPS scheme obligations, following similar surveys in 2012 and 2018.

Domestic Engagement

- FOI Commissioners have regularly engaged with Australian Government agencies and FOI practitioners, for example:
 - presenting at Australian Government Solicitor FOI and Privacy practitioner events in July and December 2022
 - holding high level round table discussions with agencies in November and December 2022
 - holding an in-person workshop on the proposed revised IC review procedure directions for agencies that made a submission, in July 2023
- The Australian Information Commissioner engages with Information Commissioners and Ombudsmen from other Australian and New Zealand jurisdictions through the **Association of Information Access Commissioners (AIAC)** which meets twice a year. The OAIC hosted the most recent meeting in June 2023.

- On 28 September 2022, the AIAC published a [statement](#) highlighting the importance of government agencies developing robust digital systems which strengthen the community’s access to information.
- The OAIC promoted **International Access to Information Day** (28 September 2022) through a dedicated website with FOI resources for the public and FOI practitioners.
- The OAIC is a member of the **Open Government Partnership (OGP) forum** which met on 17 April 2023. The Attorney-General addressed the Forum and reaffirmed the Government’s commitment to the OGP.

International Engagement

- The OAIC is active in promoting information access rights internationally and working with fellow agencies. We continue to collaborate to assist emerging jurisdictions to develop FOI capability and by sharing experience and best practice.
- The Australian Information Commissioner engages with Information Commissioners globally through international forums such as the **International Conference of Information Commissioners (ICIC)**.
- The OAIC has consulted with international non-government entities to advance access to information laws around the world. For example:
 - OAIC response to the 2022 UNESCO Survey on Public Access to Information
 - OAIC responses to ICIC surveys including those on Transparency-by-design, Training needs and Legal systems.
- In 2022, the OAIC presented on FOI and information access issues at virtual webinars for the Philippines, Niue and Samoa and hosted a delegation from the Philippines FOI Project Management Office of the Presidential Communications Operations Office.
- The Oceanic regional report to the ICIC was delivered by the NSW Information Commissioner on behalf of the Australian Information and Privacy Commissioner, held in Manila, Philippines in June 2023.

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Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws

COMMISSIONER BRIEF

FOI Extension of time requests

Number 12

- The OAIC will decide any application for an extension of time on a case-by-case basis. Relevant factors considered will depend on the nature and length of the extension sought, and may include:
 - whether the FOI request is complex and/or voluminous
 - whether other extension provisions have been applied
 - whether adequate explanatory information has been provided to support the application for an extension
 - whether an applicant has objected to an extension request or been consulted as part of the extension considerations
 - what work has already been undertaken to process the FOI request, and
 - what work will be undertaken if the extension of time is granted.

EOT APPLICATION STATISTICS

	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
s15AA Notifications	5,171	3,805	2,797	2,956	2,800	2,595	3,207	4,683
EOTs for IC review or internal review received ¹	17	20	38	43	91	122	169	109
Requests requiring OAIC decision (ss 15AB, 15AC, 54D and 51DA)								
Received	417	587	532	785	1,353	992	1,550	1,678
Finalised	415	594	531	778	1,363	971	1,556	1,665
On hand end period	14	7	8	15	5	26	20	33

¹ ss 54B and 54T. Only one request has been received for s54B extension of time in 2018-19 financial year.

Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws

EOT APPLICATION REQUEST OUTCOMES

	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
s 15AB - complex or voluminous	283	453	370	562	786	507	890	1,182
Granted	253	385	317	479	448	361	641	601
Granted varied	8	19	22	16	112	73	98	52
Granted with conditions	4	1				1	1	
Invalid	3	10	4	7	13	10	9	16
Not granted	9	11	11	16	166	27	59	437
Notified							21	20
Withdrawn	6	27	16	44	47	35	61	56
s 15AC - deemed refusal	102	112	122	178	492	405	556	385
Granted	30	97	100	163	410	335	437	324
Granted varied	3	2		2	22	25	23	7
Granted with conditions	60		2					
Invalid	1		4	7	9	12	18	19
Not granted	6	10	8	6	44	24	59	13
Notified							6	9
Withdrawn	2	3	8		7	9	13	13
s 54D - deemed affirmation	30	29	38	37	80	57	106	96
Granted	11	21	30	30	60	46	83	72
Granted varied				1	7	2	10	7
Granted with conditions	18							
Invalid		6	8	4	11	1	6	6
Not granted		2		1	2	6	4	3
Notified							2	3
Withdrawn	1			1		2	1	5
s 51DA - amendment - deemed refusal			1	1	5	2	4	2
Granted				1	5	2	4	1
Invalid			1					
Withdrawn								1
Total	415	594	531	778	1,363	971	1,556	1,665

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inquiry into the operation of Commonwealth Freedom of Information (FOI) laws

COMMISSIONER BRIEF

National Cabinet

Number 13

- On 13 March 2020, a ‘National Cabinet’ was established as an Australian intergovernmental decision-making forum composed of the Prime Minister and state and territory Premiers and Chief Ministers.
- Requests for access to documents made to the Department of Prime Minister and Cabinet (‘PMC’) relating to ‘National Cabinet’ were refused under s 34 of the FOI Act.
- Following the change of government in 2022:
 - The National Cabinet remains in existence, and its membership includes the Prime Minister, the Hon Anthony Albanese MP, and the State Premiers and the Territory Chief Ministers.
 - The approach to considering requests for documents relating to National Cabinet under the FOI Act, however, appears to have changed. We understand PMC has more recently refused some access requests for National Cabinet documents on the basis of the State-Commonwealth relations conditional exemption (s 47B).
- The OAIC currently has a total of 11 open IC reviews involving National Cabinet documents (see **Attachment A**).

Key Points

Administrative Appeals Tribunal decision

- Prior to the change of government, documents relating to ‘National Cabinet’ were considered by PMC to fall within the cabinet exemption (s 34) of the FOI Act.
- The AAT considered this issue in *Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of Information)* [2021] [AATA 2719](#) (5 August 2021) (White J).
- His Honour decided that ‘National Cabinet’, which consists of the Prime Minister and State and Territory Premiers and Chief Ministers, did not satisfy the requirements of ‘Cabinet’ as required under s 4(1) and did not constitute ‘a committee of the Cabinet’ for the purpose of s 34 of the FOI Act.
- The Department did not appeal the AAT’s decision.

Current approach to National Cabinet matters

- The National Cabinet remains in existence, and its membership includes the Prime Minister, the Hon Anthony Albanese MP, and the State Premiers and the Territory Chief Ministers.
- The approach to considering requests for documents relating to National Cabinet under the FOI Act, however, appears to have changed. We understand PMC has more recently refused some access requests for National Cabinet documents on the basis of the State-Commonwealth relations conditional exemption (s 47B).
- [Media statements](#) are published following each National Cabinet meeting. PMC have recently released a number of documents following consent orders in a recent AAT matter and have been since published them on PMC's disclosure log.¹
- The recent matter brought before the Administrative Appeals Tribunal (AAT) by Rex Patrick against PMC (previously MR21/01273, AAT reference 2022/5505), in relation to his FOI request for documents of National Cabinet, was settled on 1 May 2023 after consent was reached between the parties. In recent media coverage, Mr Patrick has tweeted that PMC has granted access to '... all documents from the first 20 meetings ...'² and that 'National Cabinet docs that should have been released publicly three years ago, have finally been released ...'.³
- During April and May 2023, the OAIC liaised with PMC regarding 4 active IC reviews involving documents of National Cabinet where the Department relied on s 34 in refusing access to the documents at issue. In May 2023, PMC advised the OAIC of its intention to make revised decisions under s 55G of the FOI Act in all 4 matters. Of these 4 matters, 3 remain open (s47E(d) and s47E(d)). See **Attachment A** for further details, including expected timeframes for resolution.

¹ The recent AAT matter was brought by Rex Patrick against PMC (MR21/01273, AAT reference 2022/5505), in relation to his FOI request for documents of National Cabinet and was settled on 1 May 2023 after consent was reached between the parties.

² @MrRexPatrick (Rex Patrick), '#Victory' (Twitter, 20 April 2023, 4.53pm AEST)
<https://twitter.com/MrRexPatrick/status/1648943017645203456>.

³ @MrRexPatrick (Rex Patrick), '#Transparency' (Twitter, 2 May 2023, 12.19pm AEST)
<https://twitter.com/MrRexPatrick/status/1653222566939738113?cxt=HHwWgoDS0cvKtvEtAAAA>.

Matters before the OAIC

- In the period 1 July 2020 to 30 June 2023, the OAIC received 25 IC review applications involving documents of **National Cabinet**. Of those matters:
 - 11 remain open (see **Attachment A**)
 - 10 were closed under s 54W(b) of the FOI Act to permit the applicant to apply to the AAT
 - one was closed under s 54W(a)(i) of the FOI Act on the basis that it was lacking in substance
 - two were finalised as withdrawn (s 54R) after PMC administratively released the documents at issue in full and
 - one was finalised as withdrawn (s 54R) in the context of the change of Government.
- In the period 1 July 2020 to 30 June 2023, the OAIC also received five IC review applications for matters involving documents of a **Committee of National Cabinet**. Of those matters:
 - three also involved documents of National Cabinet and were closed under s 54W(b) of the FOI Act to permit the applicants to apply to the AAT, and
 - two were closed as withdrawn (s 54R) in the context of the change of Government.
- The OAIC has referred 13 National Cabinet matters to the AAT under s 54W(b) of the FOI Act since Justice White's AAT decision. The reviews were referred because:
 - the applicant asked to have the matter referred to the AAT
 - the matters were highly contested, and the subject was of significant public and media interest, and
 - there was a distinct possibility that should the IC reviews have continued, they would have been appealed by either party to the AAT. It was therefore desirable for the efficient administration of the FOI Act that the decisions were reviewed by the AAT at first instance.

s47E(d)



COMMISSIONER BRIEF

Number 14

IC review of deemed access refusal decisions

- Applications for IC review of deemed access refusal decisions comprise approximately 28% of all the IC reviews on hand.
- In 2022/23 deemed applications comprised 52% of all IC review applications received.

Deemed IC review process

- The IC review process in relation to deemed matters is structured to:
 - facilitate a timely and efficient review process
 - provide greater certainty of the legal basis for decision making and clarify the decision under review in IC reviews
 - accelerate the progress of the IC review by requiring all relevant documents to be produced at the commencement of the review.
- The process undertaken in managing deemed IC review applications is outlined in **Appendix A**.

Deemed IC review statistics

- The top 20 agencies with matters involving deemed access refusals due to non-adherence to statutory timeframes is included in **Appendix B**.

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Appendix A – Process for the intake and case management of deemed access refusal decisions

Deemed IC review process- key procedural steps

- a) On receipt of an IC review application of a deemed access refusal, the Intake and Early Resolution Team conduct preliminary inquiries with the respondent to confirm that no decision has been provided within the statutory processing timeframe. The respondent is given 7 days to respond.
- b) If the respondent confirms that no decision has been provided to the applicant within the statutory processing timeframe, a 54Z notice is issued to notify respondent of the commencement of the IC review. This is accompanied by a notice under s 55T requiring the respondent to either:
 - i. make a revised decision under s 55G if the decision the agency intends to make will result in giving access to the requested documents in full, and to provide the relevant decision to the applicant and the OAIC or
 - ii. make a revised decision under s 55G if the decision the agency intends to make will give partial access to some of the requested documents, and to provide the relevant decision to the applicant and the OAIC and all relevant processing documents, including the documents at issue to the OAIC or
 - iii. to make submissions in support of the access refusal if the decision is to refuse access, along with the provision of processing documentation.
- c) Respondents are given 3 weeks to provide the requested documents or to make a revised decision.
- d) If a revised decision is issued, the revised decision becomes the IC reviewable decision, and the OAIC will contact the applicant to seek to confirm whether they wish to withdraw or proceed with their IC review before determining next steps.
- e) In the event the applicant wishes to proceed with a review of the revised decision, the Intake and Early Resolution Team confirms the scope of the IC review. The IC review is transferred to the Reviews and Investigation Team for allocation. Once allocated, the matter will progress through the case management stage ahead of any decision under s 55K.

Deemed IC review process- detailed procedural steps

The Intake and Early Resolution Team’s worksheet at [D2019/014474](#) (Conducting IC review of deemed access refusal decisions) sets out the following detailed procedural steps for management of IC reviews:

Stage	Actions
Registration and Triage	<ol style="list-style-type: none">1. The Registrations Officer is to register the IC review and the Intake sub-team is to consider whether there has been a deemed access refusal decision on the FOI request. Factors to consider include:<ul style="list-style-type: none">○ whether the statutory processing period has expired○ whether there has been an application or a request by the agency to ‘passively agree’¹ to an extension of time○ where a request consultation process under s 24AB has commenced, whether the process has commenced during the statutory processing period or once there has been a deemed access refusal.

¹ A ‘passive agreement’ refers to an agency requesting an extension of time under s 15AA and advising the applicant that where an applicant does not respond to the request, the agency takes that as a purported passive agreement by the applicant to extend the processing period.

Stage	Actions
	<ol style="list-style-type: none"> 2. If there has been a deemed access refusal, the Intake sub-team is to consider whether the application for IC review is valid (including whether it has been made within time); and, if the application for IC review is out of time, refer to 'Conducting an IC review – Section 54T Extension of Time Application Checklist', which can be found here: D2019/003336. 3. If the IC review application is valid (because it has been made within time, among other things), the Registrations Officer is to send acknowledgement letter to the applicant. 4. If the application is valid, the Registrations Officer is also to allocate the Resolve file to 'FOI – IC reviews – Deemed' queue or 'FOI- IC reviews – DHA Deemed' queue if the Department of Home Affairs [DHA] is the respondent. 5. If the application is invalid, for example because it has been made out of time or does not include evidence of the FOI request, no preliminary inquiries under s 54V to the respondent are yet required. Instead, the Registrations Officer is to allocate the Resolve file to 'FOI – Triage' queue for follow-up actions by the Intake sub-team. The Registrations Officer to mark the 'Assessor Note' field noting the reason for the application being invalid, using the following convention: '[NOW] 54T required' or '[NOW] FOI request required, or '[NOW] out of jurisdiction'.
Valid applications only: Issue preliminary inquiries	<ol style="list-style-type: none"> 6. The Registrations Officer is to send s 54V preliminary inquiries email to the respondent. The respondent is given 1 week to respond. The template can be found here: D2020/007259. 7. The Registrations Officer is to mark the 'Assessor Note' field, noting when the preliminary inquiries response is due, using the following convention: '[DD/MM] Pls due'. 8. The Intake sub-team is to monitor the agency response's due date. If a response has not been provided by the due date, the Intake sub-team is to call or email the respondent to follow up on the response. 9. If no response is received after a follow-up attempt, the Intake sub-team is to escalate to Director Intake and Early Resolution Team for consideration of issuing a s 54Z/55T notice.
Preliminary inquiries response received: respondent confirms deemed decision	<ol style="list-style-type: none"> 10. If the respondent responds to the preliminary inquiries confirming a deemed decision has been made, the Intake sub-team is to draft a s 54Z/55T notice requesting a revised decision or submissions and relevant processing documentation within 3 weeks. [The template s 54Z/55T notice in Resolve can be found under the 'All Actions' tab of the Resolve file by clicking 'Add Procedure', 'FOI Letter Templates', 'Early Resolution Letters (FOI)' and 'MR-070 54Z/55T Deemed-Notice of IC review']. 11. The Intake sub-team is to then allocate an 'Await Clearance - Director' action in Resolve to Director Intake and Early Resolution Team. 12. Director Intake and Early Resolution Team is to have regard to the Direction as to certain procedures to be followed in Information Commissioner reviews ('IC review procedure direction') and Part 10 of the FOI Guidelines, when considering whether to issue a s 54Z/55T notice. 13. Once the s 54Z/55T notice has been approved, the Intake sub-team is to send the notice to the respondent. The respondent is given 3 weeks to respond, in accordance with the IC review procedure direction. 14. The Intake sub-team is to update the 'Assessor Note' field with the following convention: '[DD/MM] 54Z/55T due'.
Preliminary inquiries response received: respondent denies deemed decision	<ol style="list-style-type: none"> 15. If the respondent responds to the preliminary inquiries advising that no deemed access refusal decision has been made, the Intake sub-team is to assess the circumstances and to conduct further preliminary inquiries with the respondent, if necessary, to determine the correct status of the decision and establish jurisdiction. 16. If no access refusal decision has been made [for example, where the applicant's FOI request was deemed to have been withdrawn by the applicant pursuant to s 24AB(7) following a request consultation process, and that notice was issued within the statutory processing timeframe], the Intake sub-team is to notify the applicant that the IC review application is invalid given no reviewable access refusal decision has been made, and invite the applicant's comments within 7 days. As part of this invitation to comment, the Intake sub-team is to include notice of intention to

Stage	Actions
	<p>finalise the application as invalid in the absence of a response within 7 days. The Intake sub-team to consult Assistant Director Intake sub-team for guidance in the first instance where required, including where the applicant provides a response contesting their application is not invalid.</p> <p>17. If the Intake sub-team is satisfied that a deemed access refusal decision has been made [for example, where the respondent has refused to deal with an invalid request when a request consultation process was required to have been undertaken], consult Assistant Director Intake sub-team in the first instance, prior to drafting a s 54Z/55T notice commencing a review [refer to steps 10–14 above]. The Assistant Director may wish to phone the respondent to discuss the OAIC’s views prior to considering whether to draft a s 54Z/55T notice commencing a review. The Assistant Director is to inform the Intake sub-team as to when the s 54Z/55T notice should be drafted. The s 54Z/55T notice should include a summary of the OAIC’s reasons as to why there has been a deemed access refusal decision – contrary to the respondent’s views.</p>
<p>No response to s 54Z/55T notice received: issue follow-up</p>	<p>18. If no response to s 54Z/55T notice has been received by the due date, the Intake sub-team is to call or email respondent and request a response within 7 days. If no response received by this date, Assistant Director Intake sub-team is to contact the respondent advising that the next step in the process is to issue a s 55R Notice. The Intake sub-team is to draft a s 55R notice for consideration by the Director Intake and Early Resolution Team. [The template s 55R notice can be found here: D2020/007254.]</p> <p>19. Relevant considerations to be taken into account when deciding whether to issue a s 55R notice include:</p> <ul style="list-style-type: none"> – the reasons given by the respondent for non-compliance with the s 54Z/55T notice – the length of time that the FOI request has been on foot – the subject matter of the FOI request – whether there are any significant or systemic issues to consider – Part 10 of the FOI Guidelines – the IC review procedure direction. <p>Further guidance on issuing s 55R Notices can be found here: D2019/014476</p> <p>20. Once the s 55R Notice has been cleared by Director Intake and Early Resolution Team, the Director is to raise a Resolve action to Assistant Commissioner FOI for clearance.</p> <p>21. Once the s 55R Notice has been approved by Assistant Commissioner FOI, the Intake sub-team is to send the notice to the respondent.</p> <p>22. The Intake sub-team is to update the ‘Assessor Note’ field with the following convention: ‘[DD/MM] 55R due’.</p>
<p>Response to s 54Z/55T notice received: respondent has provided a revised decision to the applicant</p>	<p>23. Once the OAIC has been advised by the respondent that a revised decision has been provided to the applicant and a copy of the decision provided to the OAIC, the Intake sub-team is to send a ‘proceed’ email to the applicant. The applicant is given 14 days to advise if they wish to proceed or withdraw their application for IC review. The proceed email requires that the applicant provide reasons in the event they wish to proceed with the review in accordance with the Direction as to certain procedures to be followed by applicants in Information Commissioner reviews (‘IC review procedure direction for applicants’). This email is to contain notice that if a response is not received by the due date, the IC review will be finalised under s 54W(c) of the FOI Act based on a failure to comply with the Commissioner’s procedure direction.</p> <p>The ‘proceed’ email template can be found here: D2023/013037.</p> <p>24. The Intake sub-team is to mark the ‘Assessor Note’ field with the following convention: ‘[DD/MM] ITD to A due’.</p> <p>25. Once a revised decision has been provided, the Registrations Officer is to update the Resolve file with the s 54Z/55T response including the new agency decision details under the ‘Agency Decisions’ tab of the file. The revised decision should be copied to the file as a stand-alone document and categorised as a ‘55G revised decision’ through ‘Document Properties’ to ensure it can be captured for reporting purposes. The 55G decision drop down indicator on the Resolve</p>

Stage	Actions
	<p>home screen should also be completed to show that a revised decision has been received in response to a deemed access refusal decision.</p>
<p>If no response to proceed email is received</p>	<p>26. If no response to the 'proceed' email has been received, the Intake sub-team is to follow up with the applicant by phone where phone number has been provided. The Intake sub-team is to file note the phone contact attempt.</p>
<p>Closure of IC review under s 54W(c)</p>	<p>27. If no response to the follow-up action or to the 'proceed' email from the applicant has been received, the Intake sub-team is to draft a decision to finalise the matter under s 54W(c) of the FOI Act for consideration by Director Intake and Early Resolution Team. The s 54W(c) closure letter template can be found here: D2023/013035. Further guidance on consideration of whether to close an IC review under s 54W can be found here: D2018/016247.</p> <p>28. The Intake sub-team is to allocate a Resolve file action to Director Intake and Early Resolution Team for clearance. Assistant Commissioner FOI clearance of s 54W(c) closure letters is at the discretion of the Director for contentious or sensitive matters.</p> <p>29. Once the closure letter has been approved, the Intake sub-team is to convert the closure letter to a PDF and send a copy to the applicant and the respondent, in separate emails.</p> <p>30. The Intake sub-team is to immediately update the 'Agency Decisions' tab of the Resolve file, finalising any outstanding issues under s 54W(c), and finalise the IC review. The staff member may prefer to allocate the matter into their name prior to finalisation.</p> <p>31. The Intake sub-team is to close the IC review.</p>
<p>Response to proceed email received: applicant advises that they wish to proceed with IC review</p>	<p>32. If the applicant advises that they wish to proceed with the IC review, the Intake sub-team is to send an acknowledgement email to the applicant, confirming the scope of the review. If the scope of the review unclear, the Intake sub-team is to send an acknowledgement email to include request for reasons to be provided in support of IC review within 14 days.</p> <p>33. The Intake sub-team is to send an update email to the respondent advising that the applicant wishes to proceed with the IC review. Template email can be found here:</p> <p>34. If reasons are required from the applicant, mark the Assessor field with the following convention: '[DD/MM] Subs from A due'.</p> <p>35. The Intake sub-team is to ensure a full response has been provided to the s 54Z/55T notice prior to moving matter to Assessments queue [for example, any processing documentation or submissions required in the notice should be on file].</p> <p>36. The Intake sub-team is to update the Resolve file [for example, to update the 'Agency Decisions' tab to include issues under review, and the summary field] and allocate the matter to the 'FOI – IC reviews – Assessment' queue. The Intake sub-team is to mark the 'Assessor Note' field noting there has been a deemed access refusal decision and the matter is ready for further assessment using the following convention: '[NOW] Deemed refusal'.</p> <p>37. The assessing officer will assess the complexity of the review using the Conducting IC Reviews-Case Categories worksheet at D2020/000377, and categorise the matter accordingly. The review will then be re-assigned to the Reviews and Investigations Team for case management ahead of any decision under s 55K.</p>
<p>Response to proceed email received: applicant advises that they wish to withdraw their IC review application</p>	<p>38. If the applicant advises that they wish to withdraw their IC review, the Registrations Officer is to send a withdrawal acknowledgement email to the applicant. Email template can be found here: D2020/007272.</p> <p>39. The Registrations Officer is to notify the respondent by email that the applicant has withdrawn their request for IC review and confirm that the matter is now closed. Email template can be found here: D2020/007270.</p> <p>40. The Registrations Officer is to update the Resolve file and close the file without delay, finalising outstanding issues in the 'Agency Decisions' tab as withdrawn.</p>

Appendix B- Top 20 agencies with matters involving deemed access refusals due to non-adherence to statutory timeframes

IC review deemed refusal (s 15AC) by respondent agency	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23
Department of Home Affairs	6	16	170	315	885	594
Services Australia	1	4	49	13	37	35
National Disability Insurance Agency		1	4	3	17	66
Australian Federal Police	4	6	12	20	8	31
Department of Foreign Affairs and Trade		1	23	26	22	2
Department of Veterans' Affairs		4		8	15	28
Department of Defence	1		4	4	23	18
Prime Minister of Australia		1	17	8	6	
Commonwealth Ombudsman					5	20
Department of Health and Aged Care	1		4	6	12	2
Attorney-General's Department	1	5	9	1	4	4
Department of the Prime Minister and Cabinet	1	1	3	5	4	4
Department of Industry, Science, Energy and Resources			2	8	4	1
Australian Broadcasting Corporation	1	4	4	4		1
Australian Taxation Office	2		2	1	4	5
Department of Infrastructure, Transport, Regional Development, Communications and the Arts			4	1	5	
Queensland Department of Education			10			
Minister for Home Affairs			1	6		2
Comcare	1	1	2	3	1	1
Department of Social Services			2		5	2
All others	2	13	27	33	50	38
Total	21	57	349	465	1,107	854

COMMISSIONER BRIEF

IC Review Procedure Direction

Number 15

- The Information Commissioner may give written directions under s 55(2)(e)(ii) of the FOI Act in relation to procedures to be followed in Information Commissioner (IC) reviews.
- The OAIC has proposed revisions to the 2 existing procedure directions:
 - Direction as to certain procedures to be followed in IC reviews for agencies and ministers (**Attachment A**)
 - Direction as to certain procedures to be followed by applicants in Information Commissioner reviews.
- The purpose of the proposed revisions was to:
 - clarify the process for dealing with IC review applications involving deemed access refusal decisions
 - require agencies and ministers to undertake engagement with an applicant at the commencement of an IC review
 - clarify the requirement for agencies and ministers to provide a marked up and unredacted copy of the documents at issue in an IC review, as well as a schedule of documents
 - provide that submissions will only be requested after the completion of the initial triage and early resolution process, and following any case management activities that may occur as a result of the compulsory engagement process
 - provide that no further submissions will be accepted from either party to an IC review (unless either requested by the OAIC or procedural fairness requirements are identified)
 - articulate additional potential regulatory action for non-compliance with the direction.
- The consultation period for feedback/submissions closed on Friday 30 June 2023.
- A summary of the submissions is set out at **Attachment B** and the list of submissions is set out at **Attachment C**.

- The OAIC held an in-person workshop for agencies that provided submissions on 12 July 2023. For talking points, see [D2023/015811](#).
- **Key themes and feedback**
 - **Requirement to engage:** There is significant resistance to the mandatory nature of the requirement to engage with applicants. Agencies raise administrative burden, concerns about risks to staff, limited benefit or utility, as well as a range of other concerns. Agencies also consider that there should be flexibility in the method of engagement with applicants – so they are not limited to video and telephone conference – and raise applicants’ needs and preferences. Agencies have also submitted that the OAIC should be involved in the engagement as an independent third party.
 - **Timeframes:** Time frames are too short, extensions should be available other than in extenuating circumstances, or guidance should be provided as to what constitutes extenuating circumstances.
 - **Production of documents and requests to make submissions in confidence:** Agencies were also concerned regarding the requirement to provide marked-up and unredacted documents, as well as the requirement to request to make confidential submissions ahead of providing the submission.
 - **Other issues:**
 - The OAIC should identify issues in dispute at an early stage of the IC review process and communicate this to parties to establish scope, facilitate targeted submissions and an efficient process.
 - There should be more information about the steps and process undertaken by the OAIC, including the timeframes that apply to the OAIC.

Version: 1.0	Cleared by: Rocelle Ago	Action officer: Romina Domenici
Current at: 18/08/23	Phone number:	Action officer number:

Attachment A



Australian Government

Office of the Australian Information Commissioner

Direction as to certain procedures to be followed in IC reviews

This direction is given under s 55(2)(e)(i) of the *Freedom of Information Act 1982*.

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1. About this Direction

- 1.1 This Direction is given by the Australian Information Commissioner under s 55(2)(e)(i) of the *Freedom of Information Act 1982* (the FOI Act) in relation to Information Commissioner (IC) reviews generally.
- 1.2 The purpose of this Direction is to set out the particular procedures that agencies and ministers are required to follow during IC reviews, including procedures relating to:
 - deemed access refusal decisions
 - a requirement to engage, or make reasonable attempts to engage, with IC review applicants during the IC review for the purpose of genuinely attempting to resolve or narrow the matters at issue in the IC review
 - the production of documents and submissions.
- 1.3 This Direction does not apply to the extent it is inconsistent with a provision of the FOI Act, another enactment or a specific direction made in a particular IC review.
- 1.4 This Direction is not a legislative instrument.¹
- 1.5 This Direction has effect from 1 July 2023.

2. General principles

- 2.1 IC review procedures are found in Part VII of the FOI Act. The IC review process is intended to be an informal, non-adversarial and timely means of external merits review of decisions by agencies and ministers in relation to FOI requests. Part 10 of the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act, to which ministers and 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.
- 2.2 Before commencing an IC review, the Information Commissioner will notify the relevant agency or minister that an applicant has applied for IC review of the agency or minister's decision (s 54Z notice of IC review).²
- 2.3 Section 55(2)(a) of the FOI Act authorises the Information Commissioner to conduct an IC review in whatever way the Information Commissioner considers appropriate. Section 55(2)(d) of the FOI Act allows the Information Commissioner to obtain any information from any person and to make any inquiries that the Information Commissioner considers appropriate.
- 2.4 In general, IC reviews will be conducted on the papers unless there are unusual circumstances to warrant a hearing.³ Therefore, complete and timely production of

¹ Section 55(3) of the FOI Act.

² Not every application for IC review will proceed to an IC review. The Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines) set out the circumstances in which the Information Commissioner may not conduct a review at [10.81] and [10.85] – [10.86].

³ See *FOI Guidelines* at [10.20] and [10.63].

documents at issue, submissions and any other information that has been requested is important.

- 2.5 Under s 55DA of the FOI Act, agencies and ministers must use their best endeavours to assist the Information Commissioner in the conduct of IC reviews. Under s 55D(1) of the FOI Act, agencies and ministers have the onus of establishing that a decision refusing access is justified or that the Information Commissioner should give a decision that is adverse to the IC review applicant in an IC review of an access refusal decision. The Information Commissioner will make a decision in an IC review on the basis of the evidence before them. Failure to properly satisfy the onus in s 55D(1) by providing the Information Commissioner with complete and appropriate evidence for an access refusal decision will increase the likelihood of a decision being made that is adverse to an agency or minister.
- 2.6 Section 55Z of the FOI Act provides immunity to a person from civil proceedings and penalties if the person gives information, produces a document or answers a question in good faith for the purposes of an IC review.

3. General procedure in relation to IC review of deemed refusal decisions

Preliminary inquiries

- 3.1 Where an application for IC review is made in relation to an FOI request that is deemed to have been refused under ss 15AC(3), 51DA(2) or 54D(2) of the FOI Act, the Information Commissioner will undertake preliminary inquiries under s 54V of the FOI Act. In undertaking preliminary inquiries, the Information Commissioner will require the agency or minister to confirm that the relevant FOI request is deemed to have been refused.
- 3.2 Agencies and ministers will have one week to respond to the Information Commissioner's preliminary inquiries.

Commencement of review

- 3.3 If the agency or minister confirms that the relevant FOI request is deemed to have been refused, or fails to respond to the Information Commissioner's preliminary inquiries, a notice under s 54Z will be issued notifying of the commencement of an IC review. This notice will be accompanied by a direction under s 55(2)(e) of the FOI Act, requiring the agency or minister to either:
 - a. make a revised decision under s 55G if the decision the agency or minister intends to make will result in the giving of access to the requested documents in full and to provide the relevant decision to the applicant and to the Information Commissioner or
 - b. make a revised decision under s 55G if the decision the agency or minister intends to make will result in the giving of access to some of the requested documents, and to provide the relevant decision and non-exempt documents to the applicant, and to provide all relevant processing documents and the documents remaining at issue to the Information Commissioner or
 - c. make submissions in support of the access refusal if the agency or minister intends refusing access to the requested documents and to send those submissions to both the

Information Commissioner and the applicant. The agency or minister must also provide all relevant processing documents and exempt documents to the Information Commissioner under s 55T of the FOI Act.

3.4 Agencies and ministers will have 3 weeks to respond to the Information Commissioner's written direction.

4. General procedure in relation to review of other access refusal and access grant decisions

Commencement of review

4.1 The Information Commissioner will issue a notice under s 54Z of the FOI Act to advise the respondent agency or minister of the commencement of the IC review (s 54Z notice).

Requirement to engage with the applicant

4.2 The s 54Z notice will also require the agency or minister to engage, or make reasonable attempts to engage with, the IC review applicant during the IC review, for the purpose of genuinely attempting to resolve or narrow the issues in dispute in the IC review.

4.3 Engagement with IC review applicants will comprise a telephone or video conference between the applicant and the agency or minister. The agency or minister will be responsible for contacting the applicant and making the necessary arrangements for the engagement process. The OAIC will not be involved in making such arrangements or in attending the telephone or video conference.

Response to s 54Z notice

4.4 The agency or minister will generally have 8 weeks to respond to the Information Commissioner's s 54Z notice. The 8 week timeframe takes into account the time needed to contact and make arrangements with the applicant for the engagement process, and to reach agreement, where relevant. It is not expected that agencies or ministers will require any additional time. The Information Commissioner will consider any request for an extension of time on a case-by-case basis. However it is expected that it will only be in extenuating circumstances that any further extension to time will be granted.

4.5 Respondent agencies and ministers must provide the Information Commissioner with evidence of the action they have taken to address the issues identified in the IC review application, or actions taken to contact the applicant.⁴

4.6 The evidence to be provided to the Information Commissioner will include:

- evidence that the agency or minister has taken genuine and reasonable steps to contact the IC review applicant, including any written correspondence issued to the applicant and any file notes of telephone calls made to the applicant

⁴ An agency may not be required to engage in the conciliation process if it is able to provide evidence of having engaged in a similar process at an earlier stage. However, participation in formal statutory processes (for example, the request consultation process outlined in s 24AB of the FOI Act in relation to practical refusals) will not be a basis for not consulting the applicant in relation to the IC review.

- evidence of communications and any correspondence with the IC review applicant that demonstrates the attempts made by the parties to resolve the issues in dispute, including any proposals made by the agency or minister to resolve the IC review informally, and any response from the applicant
- evidence of the outcome of the engagement between the agency or minister and the IC review applicant, including any evidence the applicant has notified the agency or minister in writing that their IC review application is withdrawn as a result of the agency or minister's contact with the applicant.⁵

4.7 In the event that not all issues in dispute in the IC review are resolved through the engagement process with the IC review applicant, respondent agencies and ministers should consider whether to make a revised decision under s 55G of the FOI Act.

4.8 If the respondent agency or minister decides not to make a revised decision under s 55G giving full access in accordance with the applicant's FOI request, agencies and ministers are required to provide the Information Commissioner with the FOI request processing documents and marked up copies of the exempt documents at issue in the IC review (if applicable) (see [5.2] below).

5. General procedure for production and inspection of documents

Production of documents

5.1 The Information Commissioner has various powers to require the production of information and documents under the FOI Act. These powers are outlined in Annexure 1 to this Direction. In addition to the Information Commissioner's information gathering powers under Division 8 of the FOI Act, the Information Commissioner is able to obtain any information from any person, and to make any inquiries, that are considered to be appropriate under s 55(2)(d) of the FOI Act. Therefore, when the Information Commissioner commences an IC review by issuing a notice of IC review, the Information Commissioner will also request relevant information and documents to progress the IC review.

5.2 Document production requirements may vary from case to case depending on the issues being considered (application of exemptions, searches, charges or practical refusal).⁶ In relation to IC reviews involving the application of exemptions under the FOI Act, the Information Commissioner will require the agency or minister to provide a marked up and unredacted copy of the documents at issue in electronic format and the documents setting out any relevant consultations (for example, under ss 26A, 27 or 27A of the FOI Act).⁷

5.3 In providing the Information Commissioner with a marked up copy of relevant documents, agencies and ministers must ensure that all redactions pursuant to an exemption, or deletions on the basis of relevance pursuant to s 22(1)(a)(ii) of the FOI Act, are clearly marked

⁵ At Annexure 2 to this Direction is an evidence checklist designed to assist agencies and ministers provide relevant evidence relating to the agency or minister's engagement with the applicant during the IC review.

⁶ See *FOI Guidelines* at [10.98].

⁷ See *FOI Guidelines* at [10.100].

with reference to the relevant provision of the FOI Act that the redactions or deletions are made under. A schedule of marked up documents must also be included.

- 5.4 In IC reviews where an agency or minister claims that documents cannot be found or do not exist, the Information Commissioner will require the agency or minister to provide evidence of the searches that have been undertaken to find relevant documents.⁸
- 5.5 In IC reviews involving a charge or a practical refusal reason, the Information Commissioner may require the agency or minister to provide a sufficiently representative sample of documents considered to be within the scope of the request.⁹
- 5.6 Agencies and ministers must provide their response within the timeframe set out in the notice, unless an extension of time has been sought and granted. However as noted at [4.4], the Information Commissioner considers that it will only be in extenuating circumstances that any further extension to time will be granted. If an agency or minister requires an extension of time to respond to a notice of IC review, the agency or minister must make a request in writing to the Information Commissioner with supporting evidence of the need for the extension prior to the due date.
- 5.7 Where an agency or minister fails to provide information and documents within the initial or extended timeframe, or requests another extension, the Information Commissioner may proceed to require the provision of information and the production of documents pursuant to s 55R of the FOI Act (discussed at Annexure 1 to this Direction).

Inspection of documents

- 5.8 Inspection of the documents at issue by the Information Commissioner in response to a request for production will only be considered in very limited situations where the agency or minister can demonstrate that the circumstances warrant inspection rather than the direct production of copies of the marked up documents.
- 5.9 What constitutes these very limited circumstances is not prescriptive and will be determined on a case-by-case basis. The onus is on the requesting agency or minister to justify that circumstances exist that warrant inspection.
- 5.10 If an agency or minister is of the view that there are circumstances that justify inspection, the Information Commissioner will require the agency or minister to provide a written request for inspection together with supporting reasons prior to the due date in the s 54Z notice of IC review.
- 5.11 The Information Commissioner considers that inspection will not be warranted where the documents at issue are subject to conditional exemptions. The Information Commissioner considers that inspection may be appropriate in some circumstances where the documents at issue are subject to a national security, Cabinet or Parliamentary Budget Office exemption

⁸ See *FOI Guidelines* at [10.98].

⁹ See *FOI Guidelines* at [3.121] and the IC review decisions in *Adrian Wright and Department of Human Services (Freedom of information)* [2017] AICmr 127 and *Cash World Gold Buyers Pty Ltd and Australian Taxation Office (Freedom of information)* [2017] AICmr 20.

claim (ss 33, 34 and 45A of the FOI Act). However, the requesting agency or minister must satisfy the Information Commissioner that the circumstances warrant inspection.¹⁰

- 5.12 If the Information Commissioner agrees to an agency's or minister's request for inspection, the agency or minister will be required to undertake all necessary arrangements to facilitate the inspection. Unless otherwise agreed, this will occur at the Information Commissioner's office.

6. General procedure in relation to submissions made during an IC review

General principles

- 6.1 All parties to an IC review will be given a reasonable opportunity to present their case through written submissions.
- 6.2 Written submissions will be sought from parties following the completion of the initial triage and early resolution process and once the matter has been assigned to a review adviser for substantive review/case management.
- 6.3 In seeking submissions from agencies and ministers in support of the IC reviewable decision, the OAIC will require the agency or minister to send their submissions to the applicant at the same time as they are sent to the Information Commissioner. The applicant will then have the opportunity to make submissions in response. The applicant will be required to send their submissions to the agency or minister at the same time as they are sent to the Information Commissioner.
- 6.4 Subject to [6.6], the Information Commissioner will not accept any further submissions from either party to the IC review.
- 6.5 The Information Commissioner will generally provide each of the parties with 4 weeks to make their submissions.
- 6.6 The Information Commissioner will contact the parties after receipt of submissions if procedural fairness requirements are identified or where a preliminary view can be provided to an agency that may result in an agency or minister making a revised decision under s 55G of the FOI Act.

Request to make submissions in confidence

- 6.7 If an agency or minister wishes to make a submission in confidence, a request for the submission to be treated in confidence must be made before providing the submission. Any request for confidentiality must be accompanied by reasons to support such a claim, including whether the submission would reveal the contents of the documents at issue.
- 6.8 Where the Information Commissioner accepts a submission in confidence, agencies and ministers must provide a version of the submission that can be shared with the applicant.¹¹

¹⁰ The OAIC is able to receive secure electronic transmission of documents. For more information contact the OAIC.

¹¹ See *FOI Guidelines* at [10.103].

- 6.9 If the Information Commissioner forms the view that the submission does not disclose exempt matter, or is otherwise not inherently confidential, the Information Commissioner will advise the agency or minister of this view and invite the agency or minister to withdraw the claim for confidentiality with respect to the submission. If the agency or minister does not wish to withdraw the claim for confidentiality they may elect to withdraw the submission because it will not be considered by the Information Commissioner to make a decision under s 55K of the FOI Act on the issues in the IC review.

Consideration of submissions

- 6.10 The Information Commissioner will generally proceed with the IC review on the basis of the evidence provided in response to the s 54Z notice, and submissions.
- 6.11 Where the Information Commissioner makes a decision on IC review pursuant to s 55K of the FOI Act, the Information Commissioner will quote or summarise an agency's or minister's non-confidential submissions in the published decision. If a confidential submission is relied on by the Information Commissioner in making a decision on the IC review, this will be noted in the decision without revealing the confidential material.
- 6.12 In providing submissions, agencies and ministers should be mindful of their obligation to assist the Information Commissioner pursuant to s 55DA of the FOI Act and their onus under s 55D of the FOI Act. As it may be appropriate for an IC review to proceed to a decision under s 55K of the FOI Act on the basis of a response to a notice of IC review, it is in agency's and ministers' interests to put forward all relevant contentions and supporting reasons in response to the notice of review.¹²
- 6.13 Agencies and ministers should be aware that if they do not make submissions when an opportunity to do so has been provided, the review may proceed to a decision under s 55K of the FOI Act without any further opportunity to make submissions.

7. Non-compliance with this Direction

- 7.1 Because the model litigant obligation under the *Legal Services Directions 2017* extends to Commonwealth entities involved in merits review proceedings, failure to adhere to the requirements of this Direction may amount to non-compliance with the model litigant obligation.¹³
- 7.2 The Information Commissioner may report non-compliance with this Direction in the Office of the Australian Information Commissioner's Annual Report.
- 7.3 The Information Commissioner may also report non-compliance with this Direction to the Office of Legal Services Coordination in the Attorney-General's Department.
- 7.4 The Information Commissioner may also consider investigating the non-compliance under Part VIIB of the FOI Act.

¹² See *FOI Guidelines* at [10.74].

¹³ See paragraph 3 of Appendix B to the *Legal Services Directions 2017*.

Angelene Falk
Australian Information Commissioner

DATE

Annexure 1: Information gathering and document production powers

1. Notice to Produce

- 1.1 Pursuant to s 55R(3) of the FOI Act, the Information Commissioner may issue a written Notice to Produce to require an agency or minister to give information or produce documents of a kind specified in the Notice. A Notice to Produce may also be issued in conjunction with either ss 55T or 55U of the FOI Act (discussed below).
- 1.2 The Information Commissioner will allow at least 2 weeks for agencies and ministers to respond to a Notice to Produce. It is an offence to fail to comply with a Notice to Produce issued by the Information Commissioner.

2. Production of exempt documents generally

- 2.1 Section 55T of the FOI Act concerns the production of exempt documents generally. This section applies when an agency or a minister claims that a document is an exempt document and the document is not covered by s 55U of the FOI Act (discussed below).
- 2.2 Section 55T(2) of the FOI Act provides that, for the purposes of deciding that a document is an exempt document, the Information Commissioner may require the document to be produced. In addition, s 55T(4) of the FOI Act provides that the Information Commissioner may require the production of an exempt document for the purpose of determining whether it is practicable for an agency or a minister to give access to an edited copy of the document.

3. Production of particular exempt documents

- 3.1 Section 55U of the FOI Act concerns the production of documents subject to a national security, Cabinet or Parliamentary Budget Office exemption claim (ss 33, 34 or 45A the FOI Act).
- 3.2 Section 55U(3) of the FOI Act provides that, if the Information Commissioner is not satisfied by evidence on affidavit or otherwise that a document is an exempt document under ss 33, 34 or 45A of the FOI Act, the Information Commissioner may require the document to be produced for examination.
- 3.3 If, after examining the documents, the Information Commissioner is still not satisfied that the documents are exempt under s 33 of the FOI Act, pursuant to s 55ZB of the FOI Act, the Information Commissioner will request the Inspector-General of Intelligence and Security to appear and give evidence on the damage that would or could reasonably be expected to result from the release of the documents.¹⁴

¹⁴ The Information Commissioner has a Memorandum of Understanding with the Inspector-General of Intelligence and Security to facilitate the Information Commissioner's information gathering powers.

Annexure 2: Evidence checklist – IC review compulsory conference

The 'Direction as to certain procedures to be followed in IC review' issued under s 55(2)(e)(i) of the Freedom of Information Act 1982 by the Australian Information Commissioner requires agencies and ministers to engage, or make reasonable attempts to engage, with IC review applicants during the IC review.

Agencies and ministers must provide the Information Commissioner with evidence of the action they have taken to address the issues identified in the IC review application, or actions taken to contact the applicant. This checklist has been developed to assist agencies provide relevant evidence and can be used as a cover when providing relevant evidence to the OAIC.

1. Contact with IC review applicant

Evidence of earlier engagement in similar process*	<input type="checkbox"/> Attached <input type="checkbox"/> Not applicable
Copy of letter sent to IC review applicant to arrange contact	<input type="checkbox"/> Attached <input type="checkbox"/> Not applicable
Date of Letter	[insert date]
File note of telephone call to IC review applicant	<input type="checkbox"/> Attached <input type="checkbox"/> Not applicable
Copies of written correspondence from IC review applicant	<input type="checkbox"/> Attached <input type="checkbox"/> Not applicable

2. Attempts to resolve issues in dispute

File note of engagement with applicant	<input type="checkbox"/> Attached <input type="checkbox"/> Not applicable
Suggestions made by agency/minister to resolve IC review	<input type="checkbox"/> Attached <input type="checkbox"/> Not applicable
Response provided by applicant, and any suggestions made by applicant to resolve IC review	<input type="checkbox"/> Attached <input type="checkbox"/> Not applicable

3. Outcome of engagement

Outcome of engagement	<input type="checkbox"/> Attached <input type="checkbox"/> Not applicable
Written notification that IC review applicant wishes to withdraw their application for IC review	<input type="checkbox"/> Attached <input type="checkbox"/> Not applicable

* An agency may not be required to engage in the engagement process if it is able to provide evidence of having engaged in a similar process at an earlier stage. However, participation in formal statutory processes (for example, the request consultation process outlined in s 24AB of the FOI Act in relation to practical refusals) will not be a basis for not consulting the applicant in relation to the IC review.

Attachment B

Summaries of agencies' submissions

Agency	Comments
Administrative Appeals Tribunal (AAT) <u>D2023/014318</u>	<p>Comments on process and overview</p> <ul style="list-style-type: none"> • Suggests increasing clarity on components and timeframes, including flow chart. For example, the stage of the process in which submissions are requested is not clear. [para 3.2; 3.4; 4.4; 6.5] • Not clear how and when identification of the issues in the IC review application occurs. Efficiency will be enhanced if issues are determined by the OAIC as early as possible (at point of notifying the agencies) and conveyed to the parties, enabling them to focus on real issues in dispute, and manage the scope/expectations of further engagement. [4.1; 4.2] • This submission makes a range of detailed/technical comments concerning the directions and suggests various aspects where clarity could be increased. <p>Response to s 54Z notice and s 55(2)(e) direction</p> <ul style="list-style-type: none"> • Requirement at 3.3b to provide the processing documents and remaining documents at this stage based on a deemed refusal seems premature. Should check with applicant whether they want a review of material exempted under the decision before the material is unnecessarily collected and submitted to the OAIC. • Requirement at 3.3c to make submissions in support of the access refusal – suggest it would be preferable to provide a statement of reasons for the decision; also reiterate comment above about requirement to provide processing and exempt documents. • 3 weeks may be too short in some cases, could refer to the possibility of seeking an extension of the time frame by way of consultation. <p>Time frames</p> <ul style="list-style-type: none"> • Time frames are generally too short, given the increased complexity of digital information collection/storage and increasing breadth and volume of requests. [Para 4.4;] • Given the significant variation in complexity, the setting of time periods for the provision of material should be done in consultation with the agency rather than relying on standard time frames. It is usual for a court or tribunal to ask parties how long they need in setting a timetable. This also avoids the need to commit resources to administering extension of time requests. • The 2-week time period (set out in Annexure 1) to respond to a Notice to Produce should instead be set following consultation with the agency (given preparation may be resource intensive and failure to comply is an offence). <p>Engagement requirement</p> <ul style="list-style-type: none"> • The engagement process should only occur where there has been no internal review and the manner in which it should be conducted should be left to the agency, which will have a better understanding of the best way to communicate with the applicant. Engagement requirement may cause delay or annoy the applicant where engagement has already occurred.

Agency	Comments
	<ul style="list-style-type: none"> • Unreasonable to undermine arrangements/protocols for applicants who have engaged in abusive/unreasonable behaviour, refers to managing psychological hazards • Evidence of the engagement could be more proportionately satisfied by the provision of a statement similar to that required by federal courts by section 6 of the <i>Civil Dispute Resolution Act 2011</i>. <p>Production of documents</p> <ul style="list-style-type: none"> • Marking up and schedule requirements can be resource intensive. Suggests referring to the Information Commissioner’s ability to specify alternative requirements, which can be determined in consultation with the agency/minister where appropriate. • Unclear how time-frame in the notice is determined. 8-week time-frame, this is insufficient for the outcome of any engagement to be considered by the OAIC and taken into account in narrowing scope to issues in dispute. Suggest the time-frame is determined in consultation with the agency.
<p>Australian Federal Police (AFP)</p> <p>D2023/015096</p> <p><i>This summarises their public submission.</i></p> <p><i>AFP have also submitted a ‘confidential submission’ with further information. We have requested they provide reasons for us not to publish.</i></p>	<p>Engagement requirement</p> <ul style="list-style-type: none"> • Disagrees with compulsory requirement. Raises workplace health and safety implications on the FOI practitioners. • FOI practitioners are not trained mediators. Notes time and expense to upskill FOI practitioners in negotiation or to engage external (legal) providers. • Attempts at engagement are frequently made at the primary decision or internal review stages. Unlikely to have more success in reaching resolution at the IC stage, particularly without the involvement of an independent third party. <p>Response to s 54Z notice</p> <ul style="list-style-type: none"> • Evidence requirements in response to a 54Z notice will place additional reporting and administrative obligations on agencies. Expresses concern that this will add further pressures to the staff workloads, detrimentally affect FOI processing timeframes. <p>Making an application for IC review</p> <ul style="list-style-type: none"> • Recommends adding the requirement for an agency reference number to the information that an applicant must provide. Applicants may have multiple FOI matters at various stages – without the reference, it can be difficult to establish which is the relevant matter.
<p>Australian Taxation Office (ATO)</p> <p>D2023/015090</p>	<p>Commencement of review: s 54Z notice and direction under s 55(2)(e)</p> <ul style="list-style-type: none"> • Suggests that we soften language to indicate that the three options in response to a s 55(2)(e) notice (release in full, release in part, refuse access) will generally be applicable, and that extensions might be appropriate in some cases.

Agency	Comments
	<ul style="list-style-type: none"> • There are circumstances not covered by the above options – for example, in complex matters it may be still unclear what or how many documents might be caught by a request, and an agency may consider an unreasonable diversion of resources argument. • Agencies may not be able to comply with the 3-week time-frame e.g. because of the number or sensitivity of documents or the time lapsed since the decision was made. <p>Engagement requirement</p> <ul style="list-style-type: none"> • Considers that either an aspirational or matter specific approach would be preferable. • Requirement may lead to a ‘tick box’ exercise without meaningful results in a majority of cases. • Where disagreements over ‘discretionary’ matters – such as size/scope of request – are not resolved at initial decision or internal review stages, it is unlikely further engagement will progress the matter. In the case of ‘non-discretionary’ issues – such as the application of the tax law confidentiality – it is not useful to set out the same reasoning which has not previously been accepted by the applicant. • Avenues to resolve issues can occur outside the engagement process, such as by investigating issues, exploring options for resolution with other agency officers or with third parties. The ATO assumes that such attempts will not be taken into consideration. • Notes circumstances where it is appropriate not to engage with applicants beyond what is necessary for their statutory functions, including for WHS reasons. Engagement is also unlikely to be effective where an applicant repetitively seeks access, in cases where an agency has explained why they cannot provide access. <p>Production of documents</p> <ul style="list-style-type: none"> • Submits that they should not be obligated to provide a marked up and unredacted copy of the document at issue in some cases – in particular, evidence to justify an exemption can exist with having regard to those documents. They make some exemption decisions without searching for and collating the documents (e.g. Person A requesting Person B’s tax return, in some instances there are also applicable offence provisions). This means they would be searching for and collating documents solely for the purposes of the IC review. <p>Production of schedule</p> <ul style="list-style-type: none"> • Submits that the requirement for a schedule of marked up documents to be provided should not be necessary in every case but only ‘where appropriate’. Notes instances where both the nature of the document and redactions are self-evident and that they provide documents in electronic bundles so particular exemptions can be located in seconds. <p>Timeframes for providing responses</p> <ul style="list-style-type: none"> • Express concerns about the position where further time is only provided in ‘extenuating’ circumstances (in this case, referring to the Direction concerning provision of sample documents). Suggest extensions should be provided where appropriate. Notes issues such as the number/sensitivity of documents and the time which has lapsed since the original decision contribute to the work involved in responding to an IC review. • Raises concern about the requirement to make an extension request in writing and with supporting evidence: states that this overlooks ‘utmost’ efforts towards compliance, competing priorities and factors beyond control.

Agency	Comments
	<p>Limit on submissions after initial exchange:</p> <ul style="list-style-type: none"> • Suggests less prescriptive wording, as the circumstances set out in the Direction are not the only circumstances where it might be appropriate to allow a party to make further submissions. <p>Request to make submissions in confidence</p> <ul style="list-style-type: none"> • Expresses lack of understanding as to why this request must be made before providing the submission. Submits that request for confidentiality and a submission could be made at the same time without affecting the OAIC process for dealing with these submissions. <p>Timeliness of IC Applications</p> <ul style="list-style-type: none"> • Referring to the strict timeframe which are proposed for agencies, suggests consideration as to whether an applicant’s delay in seeking a review will be a ground for providing an agency with additional time to respond, noting that it is more difficult to respond to aged matters. <p>Participation in IC review – ‘failure to engage’</p> <ul style="list-style-type: none"> • Clear enforceable requirements on applicants will assist in making consultations meaningful and productive. • Provide further information to applicants on what is a failure to engage. • A failure to provide the information required of an IC applicant in the Direction should be a ‘failure to engage’. • Provide applicants with details about expectations around engagement with the agency and that attending a meeting with no intention to attempt towards resolution is not considered appropriate ‘engagement’.
<p>Attorney-General’s Department (AGD) D2023/015009</p>	<p>Timeframes, steps in the process, transparency</p> <ul style="list-style-type: none"> • Suggests greater clarity concerning the time-frames that apply to the OAIC. • The order in which certain steps are to occur in the IC process is unclear (in particular, where the s 54Z notice fits in with other steps). • Detail about certain steps are not explained in the draft direction. For example, there is no explanation about when the OAIC will endeavour to make its decision, nor the timeframe for providing documents to the applicant (if the IC decides to vary the decision) and the timeframe for destruction or return of evidence documents to agencies for discontinued reviews. • The OAIC should commit to status updates to agencies in more circumstances than outlined in the guidelines, and at regular intervals. • Recommends a checklist, or some other method of transparency, about the IC review process. Additional guidance such as a flow chart similar to the AAT flow chart would be useful. <p>Response to s 54Z notice</p> <ul style="list-style-type: none"> • Extensions might be needed more routinely than in ‘extenuating circumstances’. Sometimes agencies have not been notified of IC review applications for more than 12 months after it was lodged – this additional time means agencies need to re-consult stakeholders on exemption claims, and there is also the engagement requirement to factor in.

Agency	Comments
	<p>Engagement requirement</p> <ul style="list-style-type: none"> • Where agencies have not been notified of an IC review application, they cannot – as required in the draft direction – contact applicants shortly after it is lodged (as required in the draft direction). • Suggests that agencies be provided a copy of the review application close to the time of receipt by the OAIC, so they can be proactive from an earlier stage. Alternatively, agencies should be made aware the OAIC has received the notice of review and advised when they can expect to receive a copy. • The guidance could be read to suggest that the engagement requirement only applies to access refusal or access grant decisions (not deemed refusals). This would not appear to take into account third-party consultations. • Without the OAIC’s involvement, or a clear framework to support the engagement process, there is the potential for disputes about what has occurred and agreed on during the process. • This process may expose agency staff dealing with abusive applicants to WHS risks. • Expresses a strong view that there should be discretion as to the engagement method. Verbal engagement may not be practicable, nor the preference, for applicants who are incarcerated, who are disabled, who are located overseas or who have English as a second language. • Additional OAIC guidance about the engagement process would be helpful and promote consistency, such as templates and information for applicants about appropriate conduct (which could potentially mitigate risks to staff). • Different matters may require different levels of engagement (e.g. deemed refusal compared to a matter where significant negotiation has occurred under a s 24AB process) – it would be helpful to provide some detail about the kind of engagement required in different circumstances. <p>Non-compliance with direction – reports to Office of Legal Services Co-ordination</p> <ul style="list-style-type: none"> • Non-compliance with the procedural direction may not always amount to non-compliance by the agency with its model litigant obligations. Suggests some minor language changes. <p>Format of directions, third parties</p> <ul style="list-style-type: none"> • May be simpler and more effective to have a single direction, addressed to both the agency and the applicant. • Unclear what practice directions (if any) apply to third parties joined to an IC review or whether the process for an IC review in the directions for agencies and applicants may differ where there are other parties to the review.
<p>Department of Climate Change, Energy, the Environment and Water (DCCEEW)</p> <p>D2023/015095</p>	<p>Engagement requirement:</p> <ul style="list-style-type: none"> • Undue administrative burden – creates additional work and increase need for extensions of time, additionally strain its ability to meet its statutory obligations. • Increased complexity is exacerbated by notification of IC reviews after significant time has passed since the original decision (staff movements and Machinery of Government changes increase the challenge of a consultation process). • Objects to mandatory nature – noting they regularly provide submissions to IC reviews where there is no realistic chance that the review will be successful, no benefit in an engagement requirement in these circumstances.

Agency	Comments
	<p>Section 54Z</p> <ul style="list-style-type: none"> If the engagement requirement is implemented, submits that the proposed 8 week time period is inadequate (presumably referring to s54Z).
<p>Department of Defence (Defence)</p> <p>D2023/015719</p>	<p>Engagement requirement:</p> <ul style="list-style-type: none"> May cause delay when there has already been engagement through the internal review process It may not be possible to provide further meaningful information to the applicant Suggests optional conferences that can be conducted by any method considered reasonable to the parties, such as email (noting this may also assist anonymous applicants) Parties choosing the method enables agencies to put in place WHS and security protections for staff Considers OAIC involvement in conferences vital, also considers that the OAIC should provide parties with an early high-level merits review assessment and promote informal resolution strategies If issues are not resolved through engagement, consider requiring the applicant to advise OAIC of the minister/agency response and why they were not satisfied <p>Section 54Z notice:</p> <ul style="list-style-type: none"> An additional 10 business days, in addition to the 8 weeks, should be provided to respond, if engagement with the applicant is required at the start of the IC review Suggests suspension of the notice if an agreement is reached, in conference, that the agency will review the FOI request with a view to providing a s 55G decision <p>Production of documents:</p> <ul style="list-style-type: none"> Considers requirement for a ‘sufficient representative sample of documents’ to be ambiguous – suggests clarification, for example, by providing a percentage Requests more flexible arrangements for inspection, allowing for inspection at an agency’s premises, for security reasons. <p>IC application / applicant’s submissions:</p> <ul style="list-style-type: none"> Vital for applicant to articulate their reasons for disagreeing with a particular aspect of the decision at the time they lodge their application – this would lead to more targeted submissions by agencies/ministers and meet procedural fairness requirements. Should be compulsory in the IC application for applicants to identify why an agency’s/minister’s decision is wrong. <p>Commencement date:</p> <ul style="list-style-type: none"> Requests commencement date after 1 October 2023, given resources/training/processes impacts.

Agency	Comments
Department of Employment and Workplace Relations (DEWR) D2023/015092	<p>Section 54Z notice:</p> <ul style="list-style-type: none"> Suggests a 30-day timeframe to make either a revised section 55G decision or provide submissions in support of access refusal of documents, stating this is consistent with other FOI-Act timeframes. <p>Engagement requirement</p> <ul style="list-style-type: none"> Concerned about the compulsory nature, suggests it be discretionary. Applicants may find a forced process of dealing with the agency daunting or frustrating, rather than dealing with the OAIC to which it has applied. Where relationship between parties has broken down, this could be unproductive and entrench an applicant in their position, at a point where third-party intervention by OAIC has been requested and could provide a circuit breaker. If this is compulsory, suggests consideration of specified exemptions to deal with the above circumstances.
Department of Foreign Affairs and Trade (DFAT) D2023/015676	<p>Engagement requirement</p> <ul style="list-style-type: none"> Compulsory engagement will not provide benefits for parties, will not reduce OAIC or DFAT workload, and may increase burden on agencies' resources while putting staff at risk. Supports IC encouragement of engagement but not an engagement requirement, including as to engagement method. By the time of an IC review, DFAT has generally exhausted avenues for productive engagement with the applicant. A significant portion of their decisions reviewed by OAIC involve section 33 of the Act and relate to national security or international relations sensitivities that do not lend themselves to open discussion and negotiation with members of the public. Benefit of IC review comes from an external review by a third party- unmediated resolution unlikely to provide more resolution opportunities, particularly when exemptions are at issue. Also unlikely to be of benefit given the robust decision-making process DFAT uses to ensure that exemptions are only sought when necessary and defensible. Many other IC review matters involve application of s 24 on unreasonable diversion of resources. DFAT always engages on these matters and questions benefit of further engagement at IC review stage. Due to the level of decision-making authority around s55G decisions, FOI decision-makers (SES Band 1 and above at DFAT) would need to be engaged in negotiations or give detailed advice. This is impracticable and would slow the process - in some cases, making the 8-week deadline impossible. WHS issue to expose staff to abusive/intimidating applicants, contrary to recent changes to regulations concerning psychological safety in the workplace. Engagement requirement also removes DFAT's use of anonymity to protect FOI staff, who currently do not typically use their names in correspondence to avoid this risk. Any new procedure should give agencies the discretion to no longer engage with an individual. In some cases, there may be a significant power imbalance. Concerned about requirement to provide evidence of engagement. Unclear how engagement requirement sits with the proposed process for deemed refusals. DFAT would be better able to address applicant's concerns if all material were provided to the Department as part of the s 54Z process (not only the notice and the application). <p>Deemed refusal decisions and time frames</p> <ul style="list-style-type: none"> <u>Deemed refusals usually involve high complexity or unresolved issues and a three week time frame to respond to IC direction is impractical.</u>

Agency	Comments
	<ul style="list-style-type: none"> • Where an agency decides not to make a s 55G revised decision, it will be extremely time-consuming to provide the IC with the FOI request processing documents –a significant volume of documents may have been generated in processing the request. <p>Production of documents – general procedure</p> <ul style="list-style-type: none"> • Providing a representative sample of documents in IC reviews involving a charge or practical refusal decision is inconsistent with the purpose of practical refusal (relating to unreasonable diversion of resources). Processing a representative sample is also an unreasonable diversion, it is also not clear what will constitute a representative sample. Practical refusal refers not only to difficulty locating documents but also of processing documents, and may require significant internal and external consultations, as well as consideration by senior officials. This will be wasted work if the IC ultimately decides the practical refusal decision at issue is correct. • It is not clear what will happen to these sample documents once they are provided to the IC. • The samples may attract exemptions, which would not be applied at the time they are provided to the OAIC. Representative samples may also include documents that would be subject to exemptions under s 33 of the FOI Act and would not routinely be provided in unredacted form to the OAIC. <p>Confidential submission</p> <ul style="list-style-type: none"> • A separate process for obtaining approval for confidential submissions adds to agency and OAIC burdens. • Presumably the request to provide confidential submissions will need to be made in the 4-week submission-making period but agencies may not be able to meet this timeframe and may not be able to obtain extensions of time which will only be provided in extenuating circumstances. • Unclear what happens if IC refuses a request for confidential submissions. <p>Exchange of submissions</p> <ul style="list-style-type: none"> • Question fairness of applicants having two opportunities to make submissions (including at initial application) while agencies have one.
<p>Department of Home Affairs (Home Affairs) D2023/015089</p>	<p>Overview and preference for legislative change</p> <ul style="list-style-type: none"> • Detailed submission which accepts numerous aspects of the draft Directions. • Recommends elements of the draft direction be removed or rethought particularly where the benefits ‘are unclear and the costs, safety and feasibility of implementation are of concern’. • Suggests proposed changes to the directions would be better effected by legislative changes to sections 54L(2) and 54E to enable FOI applicants’ easier access to internal review on deemed refused and substantive decisions. <p>Commencement</p> <ul style="list-style-type: none"> • Recommends commencement is negotiated with agencies so there is time for implementation, requiring: <ul style="list-style-type: none"> ○ additional staffing resources. ○ staff consultation processes including health and safety assessments ○ system changes including ICT. ○ staff training including updates to Departmental procedural instructions.

Agency	Comments
	<p>Engagement requirement</p> <ul style="list-style-type: none"> • Recommends allowing agencies to assess where there is value in engaging with an applicant, when there is no risk to staff. • Proposed value of requirement is unclear and does not offset administrative burden; also impacts timeliness. Benefit is unclear especially where: <ul style="list-style-type: none"> ○ no substantive decision has been made. ○ there are exemption claims that the applicant disputes and which cannot be resolved. ○ there is risk the exempt information could be inadvertently disclosed in conversation such as s33 exemptions. ○ the applicant is unwilling/unable to revise the scope to resolve practical refusal issues. ○ the Department consider all searches have been conducted. • The Department already engages with review applicants at the initial stages of the process where this would assist towards resolution. Applicants may not wish to engage with the Department, hence their application for independent review. • Unacceptable psychosocial and physical risks to staff when discussing outcomes with disgruntled clients. • Recommends requirement for telephone/video conference be removed or adjusted. Additional funding needed to implement this including system supports and staffing resources. • Recommends removing requirements on agencies to provide evidence of engagement – will impact timeliness and benefit is unclear. <p>Section 54Z notice</p> <ul style="list-style-type: none"> • Recommends that when the OAIC issues its s 54Z notice, it provides information about the elements of the decision the applicant disputes and any elements the IC may want specifically covered. This would aid decision makers to understand concerns and better target the drafting of timely submissions. • Accepts the proposed 8 weeks for response to a 54Z notice, stating this would often remove administration of the extension of time (EOT) process that occurs under the current 3-week time period. Requests that further guidance be provided regarding what constitutes 'extenuating circumstances' for EOT requests. <p>55(2)(e) direction</p> <ul style="list-style-type: none"> • Requests clarity as to what constitutes 'relevant processing documents' (3.3b). It will add significant strain on officers and increase administration if this includes all consultation documents and un-redacted exempt documents. • Sending submissions in support of access refusal to the applicant (3.3c) would lead to further interactions with applicants who disagree with their submissions. This is burdensome and an unreasonable diversion of resources. <p>Production of documents</p> <ul style="list-style-type: none"> • Seeks clarity around the 'extenuating circumstances' in which an extension of time would be granted. <p>Procedure for submissions</p> <p>Disagrees with requirement for agencies to send submission to applicant. Considers OAIC should do this as the party responsible for conducting the review. This avoids client confusion resulting in the OAIC missing out on client responses impacting procedural fairness and decision making.</p>

Agency	Comments
	<ul style="list-style-type: none"> Supports considerations of approaches that will reduce the need for multiple submissions for reviews to improve timeliness for all parties. To be feasible, the initial request for submissions would need to detail the issues at dispute from the client and the IC. There needs to be ability to go beyond the proposed 4-week period for submissions where circumstances prevent agencies meeting this deadline.
Department of Veteran Affairs D2023/016010	<p>Engagement requirement</p> <ul style="list-style-type: none"> Inconsistent with a trauma-informed approach when interacting with veterans. Expresses particular concerns about: <ul style="list-style-type: none"> vulnerable applicants who may not be able to engage in the early resolution process without significant support, or at all; DVA has established special communication arrangements for such clients to better assist them; applicants who wish to remain anonymous and do not wish to provide contact details. May expose vulnerable applicants and staff to risk of harm. Refers to the AAT Alternative Dispute Resolution (ADR) Guidelines' general principles which include the following considerations: the capacity of the parties to participate effectively; cultural factors; safety of the parties; the context of an application including the history of past applications by the applicant; relative cost to the parties of an ADR process and a determination. Significant additional resources would be required to facilitate conferences, with an estimated 12 hours to prepare and facilitate a conference. Sets out a comprehensive breakdown of this timing at Annexure A. This may impact its significant FOI workload and increase resource pressures. To find the balance between ensuring the health and safety of vulnerable applicants with FOI Act objects and timely/cost-effective information access, suggests consideration of exceptions to the engagement requirement, including for: <ul style="list-style-type: none"> vulnerable applicants; circumstances where an agency/minister has engaged in a similar process with an applicant at an earlier stage (clarifying the current exception to this effect); other circumstances where there are compelling reasons – suggests a flexible approach similar to the AAT; and that the agency/minister could provide submissions or evidence outlining why a conference is not appropriate and the matter could proceed to the next stage of the process, including, e.g. a teleconference between the parties facilitated by the OAIC. <p>Section 54Z notice – time-frames</p> <ul style="list-style-type: none"> Recommends that the 8-week time-frame be extended to 12 weeks. 8 weeks to engage with applicants and provide a response to the OAIC is not sufficient to consider whether it is appropriate to directly engage with applicants. Given the department's client base, this will require a comprehensive assessment involving not only the FOI team but also potentially case managers, clinicians and specialist care providers. <p>Implementation of the revised Direction from 1 July 2023</p> <ul style="list-style-type: none"> Concerns about ability to comply with Direction by 1 July 2023, recommends implementation date be extended to at least 1 October . 2023 DVA will require time to establish processes/resources to enable compliance, particularly given the vulnerability of many clients who may be on specialised communication arrangements. The department will need to set up new workflows, likely including policies, frameworks, scripts, case management and triage processes. The OAIC may wish to consider delaying implementation until after the Legal and Constitutional Affairs References Committee releases its report on the operation of Commonwealth FOI laws, noting that comprehensive inquiry will consider issues closely aligned with the proposed revisions to the Direction and may recommend further changes to the Information Commissioner.

Agency	Comments
Services Australia D2023/015091	<p>Engagement requirement</p> <ul style="list-style-type: none"> • Considers it should be facilitated by an independent third party including due to procedural fairness reasons. Significant administrative burden. Fraught approach whereby an agency is both the ADR facilitator and participant – it means agencies will be unable to robustly represent their own interests. • Shifts an independent third-party burden onto agencies and does not allow for departure from the process. This is restrictive and unnecessarily rigid in circumstances where the obligation as a model litigant to engage on a proper basis in ADR already applies. • There is already engagement with applicants in the initial request and review processes - this takes into account an applicant’s preferred mode of communication, or access to communication channels. This engagement also takes into account restricted servicing arrangements in place to counter inappropriate, threatening or aggressive behaviours. Conferencing without third-party facilitation is potentially harmful to staff. • Where engagement by conference is not appropriate, suggests a suitable alternative is a requirement to notify OAIC of the reasons for <i>not</i> engaging in its preferred ADR channels. • Recognises role for proactive engagement with some applicants, with regard to the individual circumstances of the case (such as deemed refusal matters).

Submissions

The following agencies made submissions:

1. Administrative Appeals Tribunal: [D2023/014318](#)
2. Australian Federal Police: [D2023/015096](#)
3. Australian Tax Office: [D2023/015090](#)
4. Attorney-General's Department: [D2023/015009](#)
5. Commonwealth Ombudsman: [D2023/015094](#)
6. Department of Climate Change, Energy, Environment and Water: [D2023/015095](#)
7. Department of Defence: [D2023/015719](#)
8. Department of Employment and Workplace Relations: [D2023/015092](#)
9. Department of Foreign Affairs and Trade [D2023/015676](#)
10. Department of Home Affairs: [D2023/015089](#)
11. Services Australia: [D2023/015091](#)

COMMISSIONER BRIEF

Number 16

Information access laws across Australian states and territories

- Information access laws across Australian states and territories are set out in the NSW Information and Privacy Commission's *Compendium of information access laws across Australian states and territories*.
- **Appendix A** contains the most recent draft version of the Compendium (May 2023) with the 2022 amendments to the *Australian Information Commissioner Act 2010* entered in markup.
- **Appendix B** sets out notable or instructive features which may:
 - reduce the number of requests received by agencies and ministers
 - reduce the length of time to process/decide/edit documents
 - reduce the complexity/number of issues raised in IC review
 - reflect core principles we seek to enforce in the FOI Guidelines
 - further the objects of the Act through mandating specific classes of documents to be published
 - assist in the timely discharge of regulatory functions
 - improve trust and confidence in the regulator, and
 - improve trust and confidence in the system.
- In seeking to benchmark the OAIC's performance results with other regulators, consideration should be given to the various legislative frameworks that other jurisdictions operate within, some of which do not feature a push model (a model which mandates the publication of categories of documents), nor include a mandatory consideration of a public interest test in deciding whether to refuse or grant access (see for example, *Freedom of Information Act 1991* (SA) and *Freedom of Information Act 1982* (Vic)) nor have the full merits review power that the OAIC has (see for example *Government Information (Public Access) Act 2009* (NSW)).

Appendix A

Compendium of information access laws across Australian states and territories - May 2023

	Commonwealth	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
LEGISLATION	<i>Freedom of Information Act 1982 (Cth) (FOI Act)</i> <i>Australian Information Commissioner Act 2010 (Cth) (AIC Act)</i>	<i>Freedom of Information Act 2016 (ACT)</i> (ACT FOI Act)	<i>Government Information (Public Access) Act 2009 (NSW)</i> <i>Government Information (Information Commissioner) Act 2009 (NSW)</i>	<i>Information Act 2002 (NT)</i>	<i>Right to Information Act 2009 (QLD)</i>	<i>Freedom of Information Act 1991 (SA)</i>	<i>Right to Information Act 2009 (TAS)</i>	<i>Freedom of Information Act 1982 (VIC)</i>	<i>Freedom of Information Act 1992 (WA)</i>
OBJECTS	To give the Australian community access to information held by the Government of the Commonwealth, by: <ul style="list-style-type: none"> requiring agencies to publish the information; and providing for a right of access to documents. 	Provide right of access to government information unless, on balance, access would be contrary to the public interest. Recognise importance of public access to government information for the proper working of representative democracy. Enable public participation in government processes and promote improved decision-making. Promote accountability. Ensure that, to the fullest extent possible,	Open government information to be public by: <ul style="list-style-type: none"> authorising and encouraging the proactive release of information by NSW agencies; giving members of the public a legally enforceable right to access government information; and ensuring that access to government information is restricted only when there is an overriding public interest against releasing that information. (s3)	Contains general principle of accountability for government information – states that public sector organisations are required to: <ul style="list-style-type: none"> make available to the public such government information as is reasonably possible; provide government information to the public promptly; and assist the public to ensure that personal information is accurate, complete and up-to-date. The Act also protects the privacy of	Provides right of access unless contrary to the public interest.	Unqualified objects clause, followed by statement that the means by which the objects are to be achieved includes ‘conferring on each member of the public and on MPs a legally enforceable right to ... access ... subject only to such restrictions as are consistent with the public interest (including maintenance of the effective conduct of public affairs through the free and frank expression of opinions) and the preservation of personal privacy’. Act states that nothing in the Act is intended to prevent or discourage the publication of	Unqualified right of access to documents.	General right of access - limited only by exceptions and exemptions necessary for protection of essential public interests and private and business affairs of persons whose information is collected and held by agencies. Make available to the public, information about the operations of agencies, ensuring rules and practices affecting members of the public are readily available. Facilitate and promote, promptly and at the lowest	To enable the public to participate more effectively in governing the State and to make the persons and bodies that are responsible for State and local government more accountable to the public by: <ul style="list-style-type: none"> Creating a general right of access to State and local government documents Providing means to ensure that personal information held by State and local government is accurate, complete, up to date and not misleading

Compendium of information access laws across Australian states and territories prepared by the Association of Information Access Commissioners

Current as at 26 May 2023

	Commonwealth	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
		<p>government information is freely and publicly available to everyone.</p> <p>Facilitate and promote, promptly and at the lowest cost, disclosure of the maximum amount of government information.</p> <p>Ensure personal information held by the government is accurate, up-to-date and not misleading. (s6)</p>		<p>personal information held by public sector organisations (s3(b)).</p> <p>Act does not prevent/discourage public sector organisations from publishing, or providing access to government information (including exempt information) or correcting personal information, otherwise than under this Act if it is proper to do so or is required or permitted by law to be done.</p> <p>But public sector organisations are not required to provide access to government information if it is not in the public interest to do so.</p>		<p>documents, the giving of access to documents or the amendment of records otherwise under the Act if it is proper and reasonable to do so or if it is permitted or required by any other Act or law.</p>		<p>reasonable cost, the disclosure of information.</p>	<ul style="list-style-type: none"> Requiring that certain documents concerning State and local government operations be made available to the public (s3).
SECTORS	<p>Australian Government Agencies</p> <p>Australian Government Ministers (s 11 FOI Act).</p> <p>'Prescribed authority' (s4 FOI Act):</p> <ul style="list-style-type: none"> body corporate or unincorporated 	<p>Government agencies (s 15)</p> <p>Administrative unit</p> <p>Statutory office-holder and staff</p> <p>Territory authority (excluding judicial council, law society)</p> <p>Territory instrumentality</p> <p>Territory-owned corporations</p>	<p>Government agencies</p> <p>Ministers and officers</p> <p>Local councils</p> <p>State owned corporations</p> <p>Contractors through contract arrangements (s121)</p> <p>Universities</p>	<p>Government agencies</p> <p>Government business divisions</p> <p>Person/body declared by the regulations to be a public sector organisation (s5)</p> <p>Appointed or established under an Act (s5)</p>	<p>Government department</p> <p>Ministers and staff or consultants (s13)</p> <p>Local Government</p> <p>Government Owned Corporation</p> <p>Subsidiary of a Government</p>	<p>Government ministers</p> <p>Persons who hold offices established by an Act</p> <p>Administrative units of the Public Service</p> <p>SA Police</p> <p>Councils</p>	<p>State Government agencies</p> <p>Ministers</p> <p>Local Government</p> <p>Statutory Authorities</p> <p>State and Council owned companies</p>	<p>Government agencies incl. Departments</p> <p>Local councils</p> <p>Universities</p> <p>Police</p> <p>'Prescribed authority'</p> <p>= body corporate established for a public purpose per the Act or</p>	<p>Most WA State government agencies, including departments, authorities, boards and commissions</p> <p>Ministers</p> <p>Local government agencies</p> <p>Public universities</p>

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	<p>body established for a public purpose</p> <ul style="list-style-type: none"> • NBN Co • any other body declared by the regulations <p>Norfolk Island (s 4B FOI Act)</p> <p>Restricted application to courts and court registrar (s 5 FOI Act)</p> <p>Restricted application to tribunals (s 6 and sch 1 FOI Act)</p> <p>Restricted application to the Governor-General and Official Secretary to the Governor-General (s 6A FOI Act)</p> <p>An agency if contracted to perform functions or exercise powers of the agency (s 6C FOI Act)</p> <p>Note:</p> <p>Excludes certain persons and bodies (s 7 and sch 2 FOI Act)</p> <p>Documents to which access is not able to be obtained (s 12 FOI Act)</p>	<p>Territory-owned corporations, subsidiary of a Territory-owned corporation</p> <p>Office of the Legislative Assembly</p> <p>Officers of the Legislative Assembly</p> <p>Supreme Court</p> <p>Magistrates Court</p> <p>ACT Civil and Administrative Appeals Tribunal</p> <p>Board of inquiry</p> <p>Judicial commission</p> <p>Royal commission</p> <p>Government Ministers (s 14) (excludes information relating to a Minister's personal or political activities / created or received by a Minister in the Minister's capacity as a member of the Legislative Assembly).</p>	<p>Public authorities (s4)</p> <p>Courts (s4)</p> <p>Excludes bodies identified in sch 2 (legislative assembly, assembly, committee of either or both of these bodies, royal commission, special commission of enquiry are NOT a 'public authority' for the purposes of the NSW Act).</p>	<p>Holding an office under an Act (s5)</p> <p>Local city and town councils, shire councils, agencies</p> <p>Statutory or government owned corporations</p> <p>Contractors</p> <p>Courts or tribunals other than judicial functions and decision-making functions</p> <p>NT police force</p>	<p>Owned Corporation (s14)</p> <p>Public Authority (including universities, hospital and health services)</p> <p>Excluded bodies and particular functions of bodies to which this Act does not apply (s17, Sch 2, part 1 and Sch 2, part 2)</p>	<p>Bodies established or continued in existence for a public purpose by an Act; bodies subject to control or direction by the Governor, a Minister or other instrumentality or agency of the Crown or a council, regional and council development assessment panels.</p> <p>Act does not apply to Parliament or parliamentary committees (s 5A), nor to the judicial functions of courts and tribunals (s 6).</p> <p>Some agencies are specifically exempt. Certain information held or compiled by non-exempt agencies is specifically exempt. (Schedule 2 to the Act and <i>Freedom of Information (Exempt Agency) Regulations 2008</i>).</p>	<p>Public Authorities including Tasmania Police and the University of Tasmania</p> <p>Excludes certain persons and bodies (s6)</p> <p>Specifies that information in the possession of a Minister which does not relate to the Minister's official business is exempt (s28)</p>	<p>body unincorporated by the Governor in Council or by a Minister</p> <p>= any other body, whether incorporated or unincorporated, declared by the regulations</p> <p>Blanket exemption for <i>documents</i> created by the Bureau of Criminal Intelligence</p> <p>Act does not apply to documents in the possession of the VIC FOI Commissioner or their office relating to a review of a decision or a complaint</p>	<p>Private sector providers of custodial services including prisons and prisoner transport</p> <p>(see definitions of 'agency', 'public body or office' and 'contractor' in the Glossary to the FOI Act).</p> <p>Some agencies, or parts of agencies, are specifically exempt (Sch. 2).</p> <p>Restricted application to courts and tribunals - only documents related to matters of an administrative nature (clause 5 of the Glossary).</p>

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	No access to documents of certain institutions (s 13 FOI Act)								
JURISDICTION	<p>Right of amendment or annotation (ss 48, 50 FOI Act).</p> <p>Internal review decision (ss 53A, 53B FOI Act).</p> <p>Australian Information Commissioner review of agency and Minister's decisions (Part VII FOI Act).</p> <p>Complaints and own motion investigations (s 69 FOI Act).</p> <p>Vexatious applicant declarations (s 89K FOI Act).</p> <p>Merits review/appeal to the Administrative Appeals Tribunal (s 57A FOI Act).</p> <p>Appeal on a question of law to the Federal Court of Australia (s 56 FOI Act).</p>	<p>External merits review of decisions made by agencies on open access information, access applications and amendment applications (s 82, Schedule 3).</p> <p>Monitor the operation of the ACT FOI Act, including the publication of open access information and compliance with Chief Minister's annual statement under s 95 and with the Act generally.</p> <p>Investigate complaints about an agency or Minister's action, or failure to take action, in relation to any functions under ACT FOI Act (s 69).</p> <p>See also 'Functions and Role of the Information Commissioner' section.</p>	<p>Reviewable decisions (s80)</p> <p>Complaints (s17 GIIC)</p> <p>Investigation of agency systems, policies and practices (s21 GIIC)</p>			<p>Right to internal review of original determination (unless original determination made by or at the direction of the principal officer of the agency). (s 29(6))</p> <p>Right to seek amendment of agency records (s 30). Right to seek annotation if amendment is not made (s 37).</p> <p>Agency may refuse to deal with application if it is part of a pattern of conduct that amounts to abuse of right of access or is made for a purpose other than to obtain access to information. (s 18(2a)).</p> <p>Right to external review by the Ombudsman. (s 39).</p> <p>Merits review to the SA Civil and Administrative Tribunal (SACAT). (Agencies may only seek review</p>	<p>External merits review of decisions (s44)</p> <p>Other applications for review in certain circumstances including sufficiency of search and deemed refusal (ss45 & 46)</p> <p>Appeal to Supreme Court on a question of law</p>	<p>Review decisions made by Agencies (s49A)</p> <p>Cannot review decisions of Ministers or Principal Officers, appeal straight to VCAT on those.</p> <p>Investigate Complaints (s61A)</p> <p>Monitor compliance with professional standards (if any) prescribed by the Regs (s6C)</p> <p>Report on operation of FOIA (s64)</p>	<p>External merit review of agency decisions on access and amendment applications (s63).</p> <p>Make decisions on other applications in relation to timeframes for agencies to deal with access applications and the requirements to consult third parties (s63).</p> <p>See also 'Functions and Role of the Information Commissioner' section.</p>

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	Commonwealth	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
						on a question of law.) (s 40).			
PUBLICATION	<ul style="list-style-type: none"> Require information publication scheme (Part II, Div 2 FOI Act) 	<p>Proactive disclosure of 'open access information' (s 24) unless the information is contrary to the public interest information.</p> <p>If open access information is not made available because it is contrary to the public interest information, agency or Minister must publish a description, grounds for non-release, statement of reasons, statement about review rights (subject to exceptions e.g. endanger life).</p>	<p>Requires mandatory proactive release of 'open access information' (s6, s18) including:</p> <ul style="list-style-type: none"> an agency information guide; certain information tabled in Parliament; agency's disclosure log of its access applications; register of government contracts; and record of information not made available. <p>Additional open access requirements (GIPA Regulation, cl 5) for:</p> <ul style="list-style-type: none"> Ministers; 	<ul style="list-style-type: none"> Publication of specified information (s11) 	<ul style="list-style-type: none"> Requirement for policy documents to be publicly available and a publication scheme to set out the classes of information available and the terms on which they are available, including charges Scheme must comply with the ministerial guidelines – guidelines set out the classes of information to be published, as well as the operational requirements of publication, including easy access through a 	<ul style="list-style-type: none"> Publication of specified information (s9) 	<ul style="list-style-type: none"> Promotes the proactive release of information by public authorities and Ministers and provides for 4 types of disclosure, incl. required and routine disclosure Information disclosure policy is required Processes in place must comply with the guidelines issues by the Ombudsman (s49) 	<ul style="list-style-type: none"> Publication of specified information (s7) 	<p>Requires publication of an up-to-date information statement containing specified information including a description of the kinds of documents usually held by the agency (ss94 & 96).</p> <p>Requires public availability for inspection and purchase of agencies most up-to-date information statement and each of its internal manuals (ss95 & 97).</p> <p>Requirements do not apply to Ministers or 'exempt agencies'.</p>

	Commonwealth	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
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			<ul style="list-style-type: none"> Government Departments; Statutory bodies; and Local councils. 		<p>website and regular review</p> <p>Makes distinction b/w requirements for disclosure logs of depts. and Ministers and those of other agencies (requirements per s78)</p>				
OVERSIGHT		ACT Legislative Assembly ACAT (for Ombudsman review decisions)	Joint Parliamentary Committee (s44 GIIC)		Legal Affairs and Community Safety Committee (s189)	Crime and Public Integrity Policy Committee	Joint Standing Committee on Integrity	Accountability & Oversight Committee of Parliament	Standing Committee on Public Administration, Legislative Council, WA Parliament
FUNCTIONS AND ROLE OF INFORMATION COMMISSIONER	<p>Information Commissioner, FOI and Privacy functions (under the FOI Act and Privacy Act 1988, AIC Act s 8, 9 and 10).</p> <p>Information Commissioner functions - Report to the Minister on any matter that relates to the Commonwealth Government's policy and practice regarding information held by the Government and systems (s 7 AIC Act)</p> <p>Freedom of Information Commissioner functions (s8 FOI):</p>	<p>Review decisions made by ACT Government agencies and Ministers (s 82). Grant extensions of time (s 42, s 78).</p> <p>Monitor operation of the ACT FOI Act, including the publication of open access information (s 64(1)(c)).</p> <p>Make open access declarations (s 65).</p> <p>Make guidelines (s 66).</p> <p>Prepare annual report on the operation of the ACT FOI Act (s 67).</p> <p>Investigate complaints (s 69).</p>	<p>Promote public awareness and objects of Act (s17)</p> <p>Produce annual reports (s36 GIIC)</p> <p>Report following investigation – to Minister, principal officer, Secretary DPC (s24 GIIC)</p> <p>Provide information, advice, assistance and training to agencies (s17).</p> <p>Assist agencies including services to assist with lodgement, handling and processing of applications (s17)</p> <p>Issue guidelines and publications to assist agencies</p>	<p>Promote public awareness of Act objects</p> <p>Produce annual reports</p> <p>Produce special reports at the direction of the Minister</p> <p>Develop and issue guidelines about FOI access and correction and privacy for public sector</p> <p>Provide training and advice on the provisions of the Act</p> <p>Assess proposed legislation and relevant policies</p> <p>Conduct audits of records held by PSOs for compliance</p>	<p>Promote greater awareness of operation of the Act</p> <p>Provide guidance on interpretation and administration of Act</p> <p>Provide information and assistance to agencies, applicants and third parties with access applications</p> <p>Monitoring application of the public interest test</p> <p>Commissioning external research and surveys to monitor achievement of the Act's stated objectives</p>	<p>Relevant review authority in relation to determinations made under the FOI Act (s39(1))</p> <p>Ombudsman must make annual report on work of his office to be laid before both Houses of Parliament (s 29 of <i>Ombudsman Act 1972.</i>)</p> <p>Minister administering the Act must make an annual report to Parliament (s54)</p> <p>Minister administering the Act must, in consultation with the Ombudsman, develop and maintain appropriate</p>	<p>Conduct independent, external merits review of agency decisions.</p> <p>Issue guidelines and manual and provide advice to public authorities on the process of disclosure and in relation to the operation of the Act generally (s49)</p> <p>Provide training on the operation of the Act</p>	<p>Promote agencies' understanding and acceptance of the Act and the objects of the Act (s6C)</p> <p>Report annually on operation of the Act (s64)</p> <p>Provide advice, recommendations to Minister, if requested (s6C)</p> <p>Conduct reviews (s49A)</p> <p>Investigate complaints (s61A)</p> <p>Provide advice, education and guidance to agencies in relation to compliance with any professional standards</p>	<p>Commissioner's main function is to deal with applications for external review ('complaints') of decisions made by agencies on access and amendment applications under the Act. Commissioner provides independent merits review of agency decisions (s63).</p> <p>Other functions include:</p> <ul style="list-style-type: none"> Ensuring agencies are aware of their responsibilities and the public are aware of their rights under the Act

	Commonwealth	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
	<ul style="list-style-type: none"> • promote public awareness of Act objects; • assist agencies to publish information; • provide information, advice, assistance and training; • issue guidelines; • make reports and recommendations to Minister re legislative change or administrative action; • monitoring, investigating and reporting on agency compliance; • review decisions; • investigations; • collect information/statistics about FOI matters for s30 annual report; and • other functions conferred on the Information Commissioner by the FOI Act or other legislation 		<p>and the public (s17)</p> <p>Review decisions of agencies and monitor, audit and report on the exercise by agencies of their functions under, and compliance with, the Act (s17)</p> <p>Provide reports and recommendations to the Minister (s17)</p> <p>Receive notice, issue guidelines and models in connection with agency information guides (s22)</p> <p>GIIC or other Acts (s14 GIIC and agency head GSE; PFA Act)</p> <p>Produce reports annually on operation of GIPA (s37 GIIC)</p> <p>Special report to Parliament (s38)</p>	<p>Research and monitor FOI and privacy developments elsewhere</p> <p>Make public statements about relevant FOI and privacy matters</p> <p>Deal with FOI and privacy complaints</p> <p>Grant s81 & 81A authorisations to collect, use or disclose info in a manner inconsistent with or contravene IPPs</p> <p>Approve by gazettal a Code of Practice (s73)</p> <p>Serve PSOs with a compliance notice (s82)</p>	<p>Identifying and commenting on legislative and administrative changes to improve administration of the Act</p> <p>Decide applications for extensions of time; Decide applications for financial hardship; Making varying or revoking declarations under s114 and s115 (s129)</p> <p>External review functions - investigating and reviewing decisions of agencies and Ministers (s130)</p> <p>Performance monitoring functions - including reviewing and reporting on agencies compliance with the RTI and IP Act; Issue guidelines (s132)</p> <p>Report to Parliament on matters relating to a particular external review</p> <p>Report on operations of the OIC (s184)</p>	<p>training programs to assist agencies in complying with this Act (s54A)</p> <p>State Records of South Australia assists the Minister to administer the legislation (general advice, drafting policy, guidelines, information sheets, training government agencies)</p>		<p>Monitor compliance with professional standards</p> <p>Provide advice, education to agencies in relation to the Commissioner's functions (s6C)</p> <p>Report to oversight committee if 4 or more FOIC decisions overturned by Tribunal or Supreme Court in any 12-month period (s64A)</p>	<ul style="list-style-type: none"> • Providing assistance to members of the public and agencies on matters relevant to the FOI Act • Imposing reductions in time and allowing extensions of time for agencies to deal with applications under the FOI Act • Giving approvals to give access to documents without consulting third parties in certain circumstances (s63). <p>Commissioner must report annually to Parliament on the operation of the Act and operations of the Commissioner during the year (s111).</p> <p>Commissioner must publish decisions in full or in an abbreviated, summary or note form, as is appropriate to ensure that the</p>

	Commonwealth	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
	(s8 and 11 AIC Act) Information Commissioner functions in relation to the review of the information publication scheme (s 8F FOI Act)								public is adequately informed of the grounds on which decisions are made (s76(8)).
POWERS OF COMPULSION AND PROCEDURES	Informal and lowest reasonable cost objective (FOI Act objects s 3, procedures s 55). Conduct an IC review in whatever way the Commissioner considers appropriate (s 55(2)(a) FOI Act). Give notice to require the agency or Minister to provide an adequate statement of reasons pursuant to s 26(1) FOI Act (s 55E FOI Act) Give notice for a person to give information of a kind specified in the notice or to produce document/s	Grant decision-makers' extensions of time to process access applications (s 42, s 78). Declare that information is open access information (s 65). Make guidelines (s 66). In undertaking a review, the Ombudsman is entitled to full and free access at reasonable times to all relevant government information of the agency or Minister concerned (s 68).	General procedures, informality, substantial merits, determine procedures, not bound by rules of evidence (s15 GIIC) Dealing with a complaint: information; discussions; facilitate direct resolution; investigation (s19 GIIC) Require an agency to produce information, records, or other things (s25 GIIC) Entry powers (s26 GIIC) Prevent contravention - standing to apply for an injunction and judicial	Commissioner is entitled to full and free access at all reasonable times to the records or other things of a PSO (s87(d)) Staff must assist public to exercise their rights under the Act but must not give legal advice (s88) Commissioner may delegate any powers or functions but not without the approval of the Minister (s89) Commissioner has the power to compel evidence (s110A) Commissioner must not disclose exempt information in reports, decisions	Early resolution (s90) Procedures within discretion of the IC, little formality and technicality, not bound by the rules of evidence(s95) Give directions (s95(2)) adopt procedures that are fair; ensure opportunity for participant to present views (s97(2)(a) and (b)) Preliminary enquiries (s98) Require better reasons (s99) Access to documents (s100) Require access in a particular form (s101),	In conducting a review, the Ombudsman may carry out an investigation into the subject matter of the application (and may exercise the investigative powers conferred on the Ombudsman by the <i>Ombudsman Act 1972</i> , including powers of a Commission as defined in the <i>Royal Commissions Act 1972</i>) (s38(5)(a)) In any proceedings concerning a determination made by the agency under the Act, the burden of establishing that the determination		General procedure reviews and complaints to be conducted with as little formality and technicality as possible (s49H & s61G) FOIC reviews bound by rules of natural justice (s49H) FOIC power to compel agency to produce documents (issue production notice) limited to investigation of complaints (s61J) FOIC or agency may apply to Supreme Court to determine question of FOIC's jurisdiction to issue production notice (s61K)	Commissioner has the power to do all things that are necessary or convenient to be done for or in connection with the performance of functions (s64). Commissioner may obtain information from such persons and sources, and make such investigations and inquiries, as thinks fit (in order to deal with an external review) (s70). External review proceedings conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper

	Commonwealth	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	
	<p>specified by the notice (ss 55R, 55S FOI Act)</p> <p>Require a principal officer of an agency to produce documents that are claimed to be exempt (s 55T FOI Act)</p> <p>May only require the principal officer of an agency or a Minister to produce a document they claim is exempt under the national security exemption (s 33), Cabinet documents exemption (s 34) or Parliamentary Budget Office documents exemption (s 45A) if the Commissioner is not satisfied by affidavit or other evidence that the document is exempt (s 55U FOI Act)</p> <p>May order an agency or minister to undertake further searches for documents (s 55V FOI Act)</p> <p>Compel a person to appear before him or her (s 55W FOI Act)</p>	<p>Require a person to give information relevant to Ombudsman review (s 79).</p> <p>Direct decision-maker, agency, or Minister to conduct further searches for information (s 80).</p> <p>Facilitate informal resolution of review matters (s 80A).</p> <p>Require parties to attend mediation to resolve review matter (s 81).</p> <p>Refer questions of law to the ACT Civil and Administrative Appeals Tribunal (ACAT) (s 83).</p>	<p>review (s28 GIIC)</p> <p>Formal enquiries -powers conferred on a Royal Commission for IC and witnesses</p> <p>Furnish info to IC may furnish information to Ombudsman; ICAC; DPP; PIC; and agencies (ss 31-33 GIIC)</p>	<p>or any other form (s102)</p> <p>Commissioner can refer application back to PSO and require a further review of its internal review decision (s103(2))</p> <p>CEOs have a duty to ensure their organisation complies with the standards of records (and archives) management which must be prepared and reviewed in consultation with or with the input from the Commissioner (ss137, 138 and 139)</p>	<p>Require search (s102)</p> <p>Require information, documents and attendance (s103)</p> <p>Examining witnesses (s104)</p> <p>Additional power to review any decision made by agency or Minister regarding the access application (s105)</p> <p>IC to ensure nondisclosure of particular information (s108)</p> <p>Requirement to assist during review (s96)</p> <p>IC must include reasons for decision (s110)</p>	<p>is justified lies on the agency (s48)</p> <p>In conducting a review, the Ombudsman may require agency to sort or compile documents (if agency has failed to do so) or undertake consultations relevant to the review that should have been undertaken (s38(5)(b))</p> <p>Ombudsman must notify applicant, agency and interested persons of determination and reasons for decision (s38(13))</p>			<p>In matters before VCAT the agency has the onus to establish any exemption was justified (s55)</p>	<p>consideration of the matters before the Commissioner permit.</p> <p>Commissioner:</p> <ul style="list-style-type: none"> • is not bound by the rules of evidence • has to ensure that the parties to an external review are given a reasonable opportunity to make submissions to the Commissioner • may determine the procedure for investigations and dealing with an external review and give any directions as to the conduct of the proceedings • must provide reasons for decision (ss 70 and 76). <p>Parties to an external review may be represented. Commissioner's decisions are legally binding (s76).</p>

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	Commonwealth	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
	Require evidence be given on an oath or affirmation (s 55X FOI Act)								
REVIEW POWERS Specific review powers by Information Commissioner	<p>IC reviewable decision – access refusal decisions (s 54L FOI Act and access grant decisions (s 54M FOI Act)</p> <p>An agency or Minister must comply with an IC review decision (s 55N FOI Act)</p> <p>On receiving an FOI request, the agency or Minister must no later than 14 days after the day the request is received, take all reasonable steps to notify the applicant that the application has been received (s 15(5)(a)) FOI Act)</p> <p>The Commissioner has IC review functions (Part 7 FOI Act).</p> <p>The Commissioner can make a decision to affirm, vary, or set aside and substitute an access refusal or access grant decision of an agency or</p>	<p>The Ombudsman can review decisions:</p> <ul style="list-style-type: none"> to make / to not make open access information publicly available under s 24(1) to give access to government information under s 35(1)(a) that government information is not held under s35(1)(b) to refuse access to government information under s 35(1)(c) to refuse to deal with an access application under s 35(1)(d) to refuse to confirm or deny government information is held under s 35(1)(e) 	<p>Reviewable decision (s80)</p> <p>IC power of recommendation in relation to reviews (ss92, 93, 94) and general procedure (s95)</p> <p>Making of a review application s89 (GIPA)</p> <p>Onus on agency to justify (s97(1))</p> <p>Onus on applicant to establish entitlement to reduction in processing charge (97(3))</p> <p>Onus on 3rd party applicant to justify non release (s97(2))</p> <p>IC refusal to entertain frivolous, vexatious, misconceived, lacking in substance; or review would require unreasonable and substantial diversion of resources; failure without reasonable</p>	<p>90 days for applicants to complain to OIC from the date of PSO's internal review notification;</p> <p>60 days to appeal to the Supreme Court on a matter of law only</p> <p>28 days for referral to NTCAT for hearing on application by the Respondent, when complaint is substantiated but not resolved by mediation (s112A(2)) or on application from the Complainant when the matter is dismissed (s112A(1)(b))</p>	<p>Reviewable decision (defined in Schedule 6)</p> <p>Must be made within 20 business days from the date of the written notice of the decision (or within the longer period the IC allows) (s88)</p> <p>Affirm, vary or set aside and substitute decision (s110)</p> <p>Decide not to review or further deal with all or part of external review application (s94)</p> <p>Declare vexatious applicants (s114)</p> <p>Vary or revoke vexatious declaration (s115)</p>	<p>Review determination of agency to refuse to deal with an application (s18).</p> <p>Review of determination of agency to refuse access (s20).</p> <p>Review of agency's determination to refuse to amend records (s35).</p> <p>Review of agency's determination to refuse to add notation to records (s37).</p> <p>On application for external review the Ombudsman may confirm, vary or reverse the determination the subject of the review (s38(11)).</p> <p>Ombudsman cannot make a determination that access is to be given to an exempt document but may offer reasons as to why an agency might give access to the document despite its</p>	<p>External review of agency decision on internal review (s 44).</p> <p>External review where: initial decision made by Principal Officer of Minister and therefore internal review not available; the agency or Minister has made a decision that the requested information does not exist or is not in possession, where insufficiency of search; and where no decision has been made within the stipulated time (s45(1)).</p> <p>Review of delayed decision as a deemed refusal (s46).</p> <p>Ombudsman may refer application back to agency for decision; promote</p>	<p>Reviewable decision of agency (s49A)</p> <p>FOIC may choose not to accept or may dismiss review at any stage if – frivolous, vexatious, etc., failure to cooperate, more appropriate to go to Tribunal, review not appropriate in circumstances, or unable to contact applicant (s49G)</p> <p>Agencies must assist FOIC (s49I)</p> <p>Must give parties opportunity to make written submissions (s49H)</p> <p>FOIC may resolve by agreement (s49K)</p> <p>FOIC may refer back to Agency for fresh decision (s49L)</p> <p>FOIC may facilitate negotiated agreement (s49N)</p>	<p>In dealing with an external review, the Commissioner may:</p> <ul style="list-style-type: none"> obtain information and make inquiries determine the procedure for investigating and dealing with external reviews and give directions as to the conduct of proceedings suspend inquiries, investigations or other proceedings so that efforts can be made to resolve the external review by conciliation or negotiation give directions and do such other things as Commissioner thinks fit nominate a person to act as a conciliator require the production of information or documents

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	<p>Minister (s 55K FOI Act). The Commissioner may make preliminary inquiries (s 54V FOI Act). The Commissioner may decide not to undertake or continue a IC review if the IC review applicant is frivolous, vexatious, misconceived, lacking in substance or not made in good faith (s 54W(a)(i) FOI Act); applicant's failure to cooperate in progressing application or without reasonable excuse (s 54W(a)(ii) FOI Act); applicant un-contactable after making all reasonable attempts (s 54W(a)(iii) FOI Act); failure to comply with a direction of the Information Commissioner (s 54W(c) FOI Act) Decide not to undertake or continue an IC review if the</p>	<ul style="list-style-type: none"> to refuse to amend personal information under s 61(1)(b) <p>The Ombudsman can require a person to give information relevant to a review (s 79).</p> <p>The Ombudsman can direct an agency or Minister to conduct further searches (s 80).</p> <p>The Ombudsman may refer a question of law to the ACT civil and Administrative Appeal Tribunal (ACAT) (s 83(2)).</p>	excuse of co-operate with IC; inability to contact application (s96)			<p>exempt status (s38(12)). Ombudsman may publish reasons for a determination, if Ombudsman consider it is in the public interest or the interests of the agency to do so (s38(14)). Ombudsman may comment on any unreasonable, frivolous or vexatious conduct on the part of applicant or agency (s38(16)). Ombudsman has power to review a fee or charge imposed by an agency under s 53 FOI Act (and in accordance with the Freedom of Information (Fees and Charges) Regulations 2003.). A person can seek a review of an agency's determination of a fee or charge. A person dissatisfied with the agency's review may seek a further review from the Ombudsman. The Ombudsman may waive, vary,</p>	settlement of an application, decline to continue where the applicant fails to comply with a direction; require that further or better reasons for decision be given; and decline a review on the grounds that it is vexatious or lacking in substance (s47(1)).	<p>FOIC may ask agency for explanation re exemption/s and, if not satisfied, may ask to inspect and make copies of review documents (s63C) FOIC notice of decision must set out reasons (s49P) Decision of FOIC has same effect as decision of agency (s49P) FOIC cannot be a party to a review by the Tribunal but may be called on to assist Tribunal in a review (s51) Power to make recommendation on matter arising in review to a 'relevant authority' (s49O)</p>	<ul style="list-style-type: none"> require a attendance before the Commissioner to answer questions examine a person under oath or affirmation give directions or do things necessary to avoid the disclosure of exempt matter or the existence or non existence of certain exempt matter require an agency to conduct additional searches review any decision made by the agency in relation to the access application and decide any matter in respect of the access application that could have been made by the agency confirm, vary or set aside agency decision <p>(ss 71 – 76 & 26)</p>

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	<p>Information Commission is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT (s 54W(b) of the FOI Act).</p> <p>Decide not to investigate a complaint made under s 70 (s 73 FOI Act)</p> <p>May by written instrument declare a person a vexatious applicant (s 89K FOI Act)</p>	<p>A review participant may appeal the Ombudsman's decision to the ACAT within 20 working days of the Ombudsman's decision (s 84).</p>				<p>confirm or vary the fee or charge and/or give directions as to the payment for a fee or charge (s53(4).</p>			<p>Commissioner's decision must be in writing May decide not to deal with an external review application or to stop dealing with the external review application because it is frivolous, vexatious, misconceived or lacking in substance (s67). No power to make a decision to the effect that access is to be given to an exempt document (s76).</p>
<p>TIME FRAMES Review by the Information Commissioner i.e. maximum days to escalate matter (external review)</p>	<p>An application for IC review of an 'access refusal' decision (s 54L) must be made within 60 days after the notice of the IC reviewable decision was given (s 54S(1) FOI Act)</p> <p>An application for IC review on an 'access grant' decision (s 54M) must be made within 30 days after the notice of the IC reviewable decision was given (s 54S(2) FOI Act)</p>	<p>An application for Ombudsman review must be made within 20 working days after the day notice of the decision was published in the disclosure log (s74(1)) / the day notice was given to the applicant / the day the decision was taken to be made (deemed decision). Ombudsman can grant an extension of time (s 74(1)(b)).</p>	<p>Review by Information Commissioner – application to be made within 40 working days after notice of the decision given to the applicant (s90) An agency's decision as to the validity of an application must be made and notified to the applicant as soon as practicable after the agency receives the application and in any event within 5</p>	<p>Applicant has 90 days after reviewing the notice to make a complaint to Information commissioner (s41(b))</p>	<p>Application for external review must be made within 20 business days from the date of the written notice of the decision (or within the longer period the IC allows) (s88(1)(d)) Within 10 business days after the purported application is received, the entity must give prescribed written notice to the</p>	<p>Person aggrieved by a determination of an agency following an internal review may apply to the Ombudsman for a review of the determination (s38) Application must be made within 30 days after the person received notification of the determination (s38(3)). Ombudsman has a discretion to</p>	<p>Application must be made within 20 working days from the date the decision is received, or if no decision is received, 20 working days from the 15 working days from the date the application for disclosure was lodged S44(1). There is no power to extend time.</p>	<p>Application for review of decision must be received within 28 days after the day on which written notice in writing is given (s49B) Required period for FOIC to complete review is 30 days or longer period agreed in writing by Applicant (s49J) Complaint must be made within 60 days after the</p>	<p>Application for external review to be lodged within 60 days after being given written notice of the internal review decision (if access applicant) or within 30 days if a third party (s66). Commissioner to make a decision on an external review within 30 days after the external review application was made unless the Commissioner considers that it is</p>

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	An FOI applicant or an affected third party may ask the Information for an extension of time to apply for IC review (s 54T FOI Act)	Ombudsman must make a decision on the review within 30 working days (s 82) after the day the application for Ombudsman review was made; or if notice to produce information given (s 79) – the end of the period in notice. Ombudsman can suspend review for up to 30 working days if Ombudsman first assists parties to informally resolve matter or refers parties to mediation (s 82(3)).	working days after the application is received. (s51(2)) Review by the Information Commissioner must be completed within 40 working days after the Commissioner receives all information the Commissioner considers necessary to complete the review. (s92A)		applicant of the decision. (s32(2))	extend time (s38(4)). Application to review an agency's determination must be made within 30 days after notice of the decision (s39(3))		action or conduct complained of occurred (s61A(4))	impracticable to do so (s76). Agencies must deal with an access application as soon as practicable or within the "permitted period" - 45 days or as agreed between the applicant and the agency or as allowed by the Commissioner (s13). If applicant does not receive a notice of decision with the time frames outlined in the Act, they can seek the next level of review (internal or external).
COMPLAINTS MANAGEMENT AND DISPUTE RESOLUTION POWERS/FUNCTIONS	Investigate complaints against agencies in the performance of their functions under the FOI Act. Initiate own motion investigations (s 69 FOI Act)	Investigate complaints against agencies or Minister's in the performance of their functions under the ACT FOI Act (s 69). The Ombudsman can direct an agency or Minister to conduct further searches for information (s 80). The Ombudsman may assist a	Making of a complaint s17 (GIIC) Assist resolution, investigate, refer. Dealing with a complaint: information; discussions; facilitate direct resolution; investigation (s19 GIIC) Require an agency to produce information, records, or other things (s25 GIIC)	Complaints may be dealt with jointly (s104A) Accept, reject or refer a complaint back to the PSO within 90 days (s106) Refer a complaint to Ombudsman, Health Complaints Commission or interstate Privacy Commissioner (s108) Investigate an accepted complaint (s110)	Onus on agency to justify (s87(1)) Onus on participant objecting if disclosure decision (s87(2)) IC refusal to deal with all or part of external review application if frivolous, vexatious, misconceived, lacking in substance; failure to comply with direction by IC; failure to	Ombudsman may try to effect a settlement between participants to the review (s38(5)(c)(i)) At request of agency, may suspend review to allow an opportunity for a settlement to be negotiated (s38(5)(c)(ii)) Agency and applicant must cooperate in the	No complaints function under the Act, but complaint can be made under the <i>Ombudsman Act 1978</i> . The Ombudsman does not have power, however, to investigate a matter under the Ombudsman Act if it could be the subject of review under the RTI Act ((s47(3)). Ombudsman can promote	Handle complaints (s61A) FOIC may refer complaint to another body if more appropriate to deal with (s61C) FOIC may not accept or may dismiss complaint at any stage if – frivolous, vexatious, etc., failure to cooperate, review not appropriate in circs, or unable to	Commissioner is not given express power to investigate expressions of dissatisfaction about the way that an agency has dealt with an access application except as it relates to an external review before the Commissioner. Commissioner may use conciliation dealing with

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		<p>respondent and applicant to a review to resolve the matter informally (s 80A).</p> <p>The Ombudsman can refer a matter for mediation and require parties to attend (s 81).</p>	<p>Entry powers (s26 GIIC)</p> <p>Prevent contravention - standing to apply for an injunction and judicial review (s28 GIIC)</p> <p>Formal enquiries -powers conferred on a Royal Commission for IC and witnesses</p> <p>Furnish info to IC. IC may furnish information to Ombudsman; ICAC; DPP; PIC; and agencies (ss 31-33 GIIC)</p>	<p>Decide on the release of 3rd party information</p> <p>Decide whether there is sufficient prima facie evidence of the matter complained of</p> <p>Notify parties with a written prima facie decision</p> <p>Refer matter to mediation as a precondition to a Tribunal proceeding if not already referred to mediation during process of investigation</p> <p>Conduct the mediation and provide mediation certificate (s111)</p> <p>Refer a complaint to the Tribunal after receiving an application from the Complainant (s112A(1)) or application from the Respondent (s112A(2)), both of which must be made within 28 days of receiving the decision to dismiss or if not resolved by mediation or other agreement respectively</p> <p>Commissioner must refer the complaint to the</p>	<p>cooperate in progressing the external review application without reasonable excuse; inability to contact applicant (s94); substantial and unreasonable diversion of resources (s41); previous application for same documents (s43)</p>	<p>process (including attempts of Ombudsman to effect a settlement) (s38(7))</p> <p>Ombudsman may dismiss an application if applicant has failed to comply with s38(7) (s38(8)).</p> <p>Ombudsman might conciliate a complaint or investigate an administrative error on the part of an agency administering the FOI Act under provisions of the <i>Ombudsman Act 1972</i>.</p>	<p>settlement of an application for review and give directions in this regard ((s47)).</p>	<p>contact applicant (s61B)</p> <p>Must dismiss complaint if subject matter has been or can be dealt with as a review by FOIC or the Tribunal (s61B)</p> <p>FOIC must give written reasons if complaint dismissed (s61B)</p> <p>Complaints investigation, agencies must cooperate with FOIC, must be dealt with in private (s61D-F)</p> <p>FOIC to conduct preliminary enquiries and consult with parties (s61G)</p> <p>FOIC must take reasonable steps to resolve informally (s61G)</p> <p>Complaint to be conciliated if cannot be resolved (s61H)</p> <p>Procedures if conciliation unsuccessful (s61I)</p> <p>FOIC may ask agency or Minister to produce documents (s61I)</p>	<p>external review applications.</p>

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				Tribunal (s112A(5)) and prepare a written report within 60 days of the referral (s112B)				FOIC power to compel production of documents requested under s61I (s61J) FOIC may make recommendations to agency or Minister re complaint, if appropriate (s61L)	
REGULATORY POWERS AND DELEGATION	<p>IC may delegate, in writing, his or her functions or powers to a member of staff of the Office of the Australian Information Commissioner other than:</p> <ul style="list-style-type: none"> preparing the Annual Report; issuing Guidelines; referring a question of law to the Federal Court under s 55H of the FOI Act; correcting errors in an IC review decision under s 55Q; 	<p>Under s 64(2) of the Act, the Ombudsman may delegate their powers and functions to a person mentioned in s 32 of the <i>Ombudsman Act 1989</i> (ACT).</p>	<p>IC may delegate any function to staff or persons authorised through regs (s13 GIIC)</p> <p>Monitor, audit, report (s17)</p> <p>Education & advice (s17)</p> <p>Issue statutory guidelines and other publications (ss17, 22)</p> <p>Review agency decisions (s17)</p> <p>Report and recommend to Minister proposals for legislative and administrative changes (s17)</p>	<p>Commissioner may delegate powers and functions under the Act but must not do so without the approval of the Minister (s89)</p> <p>May require a PSO to answer a question, produce a record, or other thing (s87(e)).</p> <p>Commissioner has the power to compel evidence (s110A)</p> <p>Commissioner can refer application back to PSO and require a further review of its internal review decision (s103(2))</p>	<p>IC may delegate to a member of staff of OIC all or any of the commissioner's powers (s145)</p> <p>Monitor, audit and report (s131)</p> <p>General Power to do all things necessary in connection with functions under an Act (s125)</p> <p>Training, information, assistance and guidance (s128)</p> <p>Comment on legislative and administrative changes (s128)</p> <p>Review decisions of agencies and Ministers (s130)</p>	<p>Ombudsman may delegate powers under section 9 of the <i>Ombudsman Act 1972</i>.</p>	<p>Ombudsman may delegate powers pursuant to s10 of the Ombudsman Act.</p>	<p>FOIC may delegate to staff or persons engaged under s6J of FOIA, any functions and powers, except - power to make decision on review; power to make recommendation re complaint; power to prepare reports required under Pt VII of FOIA</p>	<p>Commissioner may, in writing, delegate to a member of staff the performance of any of the Commissioner's functions, except: the powers to:</p> <ul style="list-style-type: none"> require the production of the disputed documents make a decision in relation to an agency's decision review exemption certificates delegate (ss75, 76, 77 & 79). <p>Governor may appoint an Acting Commissioner, where the Commissioner is on leave or unable to perform the functions of the office (s59).</p>

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	<ul style="list-style-type: none"> implementing notices and reports ss 89 and 89A of the FOI Act; and making a vexatious applicant declaration under s 89K of the FOI Act. <p>In addition, certain functions may only be delegated to an OAIC staff member who is an SES employee:</p> <ul style="list-style-type: none"> making an IC review decision under s 55K of the FOI Act exercising the discretion not to investigate a complaint under s 73 of the FOI Act notifying on completion of an investigation under s 86 of the FOI Act. 								

OFFENCE PROVISIONS AND PROTECTIONS	<u>Offences:</u> Contravention of s 55R obligation to produce information and documents. 6 months imprisonment (s 55R(5) FOI Act) Contravention of s 55W obligation to appear before the Information Commissioner, 6 months' imprisonment (s 55W(3) FOI Act) Contravention of s 55X answering truthfully under oath or affirmation. 6 months	Knowingly making a decision contrary to the Act (s 89 - 100 penalty units). Intentionally giving direction to someone else who is required to exercise a function of the Act, contrary to the Act (s 90 - 100 penalty units). Failing to identify information (s 92 - 100 penalty units).	Unlawful access (s119) Concealing or destroying (s120) Protection breach of confidence, defamation (s113) criminal action (s114), personal liability (s115) Obstruct; hinder; resist; make false statements; mislead (s43(2) GIIIC) Immunity of IC and others (s42;45 GIIIC) No powers to bring offence proceedings (s28(6) GIIIC)	A person must not conceal or dispose of govt info to prevent access or correction Person must: <ul style="list-style-type: none"> not breach confidentiality provisions of s148; not knowingly provide false or misleading info; not without reasonable excuse obstruct, hinder or fail to comply with Commissioner.	Unlawful access to document (s176) Disclosure or taking advantage of information (s179) Protection defamation or breach of confidence (access s170 and publication s171 RTI Act); (s171); criminal (access to document s172 and publication s173); personal liability (s174) False or misleading information (s177)	Protection against criminal actions with respect to giving access to a document (if person by whom determination is made honestly believes that the Act permits or requires the determination to be made) (s51) Protection in respect of actions for defamation or breach of confidence in certain cases (s50). Immunity from liability for Ombudsman or staff for any act or	A person must not deliberately obstruct or unduly influence a principal officer, a Minister, a delegated officer or the Ombudsman in the exercise of the power to make decisions (s50(1)). A person must not deliberately fail to disclose the subject of an application where that person knows the information exists (s50(2)). Principal Officers, Ministers and the	FOIC must ensure only specified person has access to docs produced in review or complaint. Criminal offence to intentionally or recklessly disclose to non-specified person other than Agency who produced the docs. Penalty: 240 penalty units or 2 years prison or both. No defamation or breach of confidence for	It is an offence for a person to gain access to a document containing personal or business information about another person by deceit (s109). It is an offence for a person to conceal, destroy or dispose of a document to prevent access to it (s110). Officers of an agency are protected from defamation, criminal liability and personal liability if they act
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	Commonwealth	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
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	<p>imprisonment (s 55X(3) FOI Act)</p> <p>Failure to comply with a notice issued under s 79 by the Information Commissioner. 6 months imprisonment (s 79(5) FOI Act)</p> <p>Failure to comply with a notice issued under s 82 by the Information Commissioner, 6 months' imprisonment (s 82(3) FOI Act)</p> <p>Contravention of s 83 answering truthfully under oath or affirmation (s 83(3) FOI Act)</p> <p><u>Protections:</u></p> <p>Claim of legal professional privilege to documents or information produced for the purpose of an IC review (s 55Y FOI Act)</p> <p>Protection for persons from liability in the IC review process (s 55Z FOI Act)</p> <p>Protection from liability relating to documents produced for an investigation (s 85 FOI Act)</p>	<p>Improperly influencing the exercise of a function under the Act (s 93 - 100 penalty units).</p> <p>Gaining unlawful access to government information through deceit or misleading a person exercising a function under the Act (s 94 -100 penalty units).</p>	<p>Acting unlawfully (s116)</p> <p>Directing unlawful action (s117)</p> <p>Improperly influencing (s118)</p> <p>Falsely represent IC or staff; cause inflict or procure violence, punishment, damage, disadvantage; dismiss any employee, prejudice any employee's employment (s43 GILC)</p>		<p>Direction to employee to act in particular way (s175)</p> <p>Failure to produce documents or attend proceedings (s178)</p>	<p>omission in good faith (s30(1) <i>Ombudsman Act 1972</i>).</p> <p>It is an offence to obstruct the Ombudsman in the performance of investigative powers under the Ombudsman Act (s 24 <i>Ombudsman Act 1972</i>).</p> <p>If Ombudsman or SACAT forms opinion that there is evidence that a person, being an officer of an agency, has been guilty of a breach of duty or of misconduct in administration of the act, may bring evidence to the notice of appropriate person with a view to disciplinary action being taken (s39(17), s42).</p> <p>A person acting honestly and, in the exercise, or purported exercise of functions under the Act incurs no civil or criminal liability in consequence of doing so (s52)</p>	<p>Crown are protected against actions for defamation or breach of confidence where information has been provided as required or permitted by the Act or where the officer or Minister authorised its release in the belief that it was required to be provided (s51).</p> <p>Where information has been provided in the circumstances referred to above, no person concerned in providing the information, is guilty of a criminal offence by reason only of the provision of the information or authorising that provision (s52).</p>	<p>giving access to document (s62)</p> <p>No personal liability for making complaint (s63B)</p> <p>No criminal offence - giving or authorizing access (s63)</p> <p>FOIC and others not compellable to produce documents (s63A)</p> <p>No penalty or offence provisions for agencies.</p>	<p>in good faith (ss104-107).</p> <p>Commissioner and his or her staff are protected from personal liability for an act done or omitted to be done in good faith (s80).</p> <p>It is an offence for the Commissioner or his or her staff to disclose confidential information or take advantage of it for their own benefit (s82).</p> <p>It is an offence for an agency to fail to produce information or documents, attend before the Commissioner or attend conciliation (s83).</p>
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	Commonwealth	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
	<p>Protection from civil action in investigations under s 70 (s 89E FOI Act)</p> <p>General protection against civil liability (s 90 FOI Act)</p> <p>Protection against civil liability in particular situations (s 91 FOI Act)</p> <p>Protection against criminal liability (s 92 FOI Act)</p>								
REVIEW/APPEAL AVENUE INCLUDING FEES AND CHARGES	<p>Application for Information Commissioner review or complaints: free</p> <p>EXTERNAL REVIEW:</p> <p>Discretion to not undertake a review or not to continue a review if satisfied the decision should be considered by the AAT (s 54W(b) FOI Act)</p> <p>Commissioner can refer questions of law to → Federal Court of Australia (s 55H FOI Act)</p> <p>Apply to Federal Court for order directing agency or Minister compliance with IC review</p>	<p>Initial access application to an agency or Minister: costs may apply, depending on the amount/pages of information requested, with the first 50 pages being free of charge (s 104) (no fee for seeking own personal information). Can apply for fee waiver (s 107).</p> <p>External review to Ombudsman: no cost.</p>	<p>GIPA formal access application (\$30) (s41) with provision for waiver (s127)</p> <p>Internal (agency) review (\$40) – no processing charges (s87)</p> <p>External review by IC: free</p> <p>External review by NCAT: fee prescribed under the <i>Civil and Administrative Tribunal Regulation 2013</i>.</p> <p>No review by IC if decision is or has been the subject of NCAT review (s98)</p> <p>Referral of systemic issues to IC from NCAT (s111)</p>	<p>FOI application to agency-\$30</p> <p>EXTERNAL REVIEW:</p> <p>IC: free</p> <p>NTCAT: fee</p> <p>APPEAL:</p> <p>Appeal to Supreme Court on Commissioner or NTCAT decisions by a person aggrieved on <i>questions of law</i> only (s129)</p>	<p>Application (\$46.40);</p> <p>Internal agency review (no fee)</p> <p>EXTERNAL REVIEW:</p> <p>IC: free</p> <p>QCAT – applicant appeal question of law (no fee) (s119)</p> <p><i>RTI Act</i></p> <p>Processing charge (more than 5 hours - \$7.20 for each 15 minutes; no processing charge under RTI Act if document contains personal information)</p> <p>Access charges may apply under RTI Act</p> <p>IC referral question of law</p>	<p>FOI request application fee currently \$34.25</p> <p>Processing charges may also be imposed by agency</p> <p>EXTERNAL REVIEW (no fee).</p> <p>Prescribed fees and charges (s53(1))</p> <p>Waiver of fees (s53(2)(a))</p> <p>Member of Parliament entitlements-access without charge unless work generated by application more than \$1000 (s53(2)(b)).</p> <p>APPEAL:</p> <p>Agency → SACAT on a</p>	<p>Fee on application for assessed disclosure of information - \$38.25. There is provision for waiver in certain circumstances.</p> <p>No fee on applications for external review.</p> <p>There is no right of appeal under the Act, only a right to appeal to the Supreme Court on a question of law.</p>	<p>FOI request application fee as at 1/7/15 \$27.90 (s17)</p> <p>EXTERNAL REVIEW:</p> <p>FOIC: free</p> <p>TRIBUNAL (VCAT): FEE except if an application from 'deemed refusal' by Commissioner (s49J(2)) or applicant seeking own documents. From 1/7/2016 no fee</p> <p>FOIC dismisses review as more appropriate by Tribunal</p> <p>Application to Supreme Court on question of FOIC's jurisdiction to</p>	<p>Agency fees and charges</p> <p>\$30 fee for access application (no fee if only seeking personal information about the access applicant).</p> <p>Agencies can impose charges for dealing with an access application for non-personal information (s16).</p> <p>Charges must be calculated by an agency in accordance with the <i>Freedom of Information Regulations 1993</i> (WA).</p> <p>Internal review</p> <p>An aggrieved person may seek internal review of an agency's</p>

Compendium of information access laws across Australian states and territories prepared by the Association of Information Access Commissioners

Current as at 26 May 2023

	Commonwealth	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
	<p>decision – application made by review applicant or Commissioner (s 55P FOI Act)</p> <p>Appeal questions of law to Federal Court by review party from a decision of the Information Commissioner on an IC review (s 56 FOI Act)</p> <p>Application to the AAT – review of an Information Commissioner's vexatious applicant declaration under s 89K (s 89N FOI Act)</p>	<p>Ombudsman review decisions are reviewable by the ACT Civil and Administrative Tribunal (s 84): lodgment fee (\$384 for person), and further costs may apply (see also s 87).</p> <p>Application to ACT Supreme Court: costs apply as per schedule of fees for the Supreme Court (see also s 88).</p>			<p>QCAT (no fee) (s118)</p> <p>Application to QCAT – review of decision about financial hardship (no fee) (s120)</p> <p>Application to QCAT – review of vexatious applicant declaration (no fee) (s121)</p> <p>Appeal by applicant of QCAT decision (\$315.70, s119)</p>	<p>question of law (s40(1)).</p> <p>Person → SACAT (s40(2)).</p> <p>A person who is aggrieved by a determination of an agency following internal review (or where decision not eligible for internal review) may appeal directly to District Court (s40(2)).</p> <p>Ombudsman cannot be a party to appeal proceedings (s40(6)).</p> <p>SACAT must order agency pays other party's reasonable costs (s40(8)(a)).</p> <p>SACAT may order that a party pay costs of agency, only if satisfied that the party acted unreasonably, frivolously or vexatiously (s40(8)(b)).</p> <p>Proceedings in SACAT are to be commenced within 30 days after notice of the determination to which the</p>		<p>issue production notice (s61K)</p> <p>Application fee can be waived or reduced if it would cause hardship.</p> <p>Access charges can be charged for searching for and providing access to documents as per FOI (Access Charges) Regns.</p> <p>Access charges can be waived or reduced.</p> <p>No charge for person who is impecunious seeking own personal info.</p> <p>No charge for searching for MP's.</p> <p>Agency must seek a deposit if charges are more than \$50. Up to \$100 deposit is \$25. Over \$100 deposit is 50% of the charge.</p> <p>The 45 days for processing the request starts when the deposit is paid.</p> <p>Documents do not have to be provided until</p>	<p>decision (s39) – no fee or charges.</p> <p>External review</p> <p>An aggrieved person may seek external review of an agency's internal review decision or decision of the agency's principal officer (s65) – no fees or charges.</p> <p>Commissioner has discretion to accept an external review application without internal review having been applied for or completed (s66).</p> <p>Commissioner can make a costs order on external review in exceptional cases (s84).</p> <p>Review by the Supreme Court</p> <p>Parties can appeal to the Supreme Court of WA on any question of law arising out of the Commissioner's decision on an external review relating to an access application (s85).</p> <p>Commissioner may refer to the Supreme Court any question of</p>

	Commonwealth	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
						<p>proceedings relate (s40(3)).</p> <p>External review and SACAT proceedings are not available to an agency or person simultaneously (s40(3)).</p> <p>SACAT application fee as at 1 July 2016 \$71.60.</p>		<p>access charges are paid.</p> <p>Applicant can appeal a charge to VCAT but FOIC has to first certify that the matter is sufficiently important for VCAT to consider per s.50(1)(g).</p>	<p>law that arises in the course of dealing with a application for external review (s78).</p> <p>Supreme Court may make an order or decision relating to costs as it thinks fit.</p> <p>If an agency appeals a decision, it bears its own costs.</p> <p>Commissioner is not liable for any costs, except where the Commissioner has referred a question of law to the Supreme Court (s89).</p>

Other notes:

- In all jurisdictions apart from Victoria and the ACT, the FOI Acts provide for decisions for which internal review may be sought:
 - Commonwealth – Part IV
 - ACT - the review powers of the Ombudsman replace the internal review process
 - NT – s 38
 - NSW – s 82
 - QLD – s 80
 - SA – s 38
 - TAS – s 43
 - WA – s 39 and s 54
 - Victoria – the review powers of the FOI Commissioner replace the internal review process

Appendix B

Features for consideration in state, territory and New Zealand information information access laws

Category	Feature	Jurisdiction	Benefit
Definition of personal information	Definition of personal information for an individual who is or has been an officer of an agency or staff member of a Minister, does not include information about (i) the individual's position or functions as an officer or staff member, or (ii) things done by the individual in exercising functions as an officer or staff member (<i>Freedom of Information Act 2016</i> (ACT) Dictionary)	ACT	<ul style="list-style-type: none"> • Reduce the length of time to process/decide/edit documents • Reduce the complexity/number of issues raised in IC review • Reflect core principles we seek to enforce in the FOI Guidelines • Improve trust and confidence in the system.
	Definition of personal information excludes information about an individual (comprising the individual's name and non-personal contact details, including position title, public functions and the agency in which the individual works) that reveals nothing more than the fact that the person was engaged in the exercise of public functions: <i>Government Information (Public Access) Act 2009</i> (GIPA Act) s 4(3)).	NSW	
Discussion on public interest test	Public interest (<i>Freedom of Information Act 2016</i> (ACT) s 16); decision making steps (s 16(1)); factors not to be taken into account, including whether access to the information could inhibit frankness in the provision of advice from the public service (s 16(2)); applicant's identity, circumstances and reason for seeking access may be taken into account if the information requested is personal information and the personal information is not about the applicant (s 16(3))	ACT	<ul style="list-style-type: none"> • Reduce the length of time to process/decide/edit documents • Reduce the complexity/number of issues raised in IC review, • Reflect core principles we seek to enforce in the FOI Guidelines
	Factors to be considered when deciding the public interest test (<i>Freedom of Information Act 2016</i> (ACT) Schedule 2)	ACT	

Category	Feature	Jurisdiction	Benefit
Publication	Agencies and ministers must make open access information publicly available unless it is contrary to the public interest information. In those circumstances, a description of the information must be published unless there is a legislatively-specified reason not to publish – and the Ombudsman must be told about the decision and reasons. (<i>Freedom of Information Act 2016</i> (ACT) ss 23–24; incoming briefs, question time briefs, Minister’s disclosure log and diary)	ACT	<ul style="list-style-type: none"> • Reduce the number of requests received by agencies and ministers • Reduce the length of time to process/decide/edit documents • Reduce the complexity/number of issues raised in IC review, • Reflect core principles we seek to enforce in the FOI Guidelines • Further the objects of the Act through mandating specific classes of documents to be published
	Open access requirements for minister (GIPA Regulation cl 6 and 9).	NSW	
	Cabinet papers and minutes must be proactively released within 30 business days of final decisions being taken by Cabinet, unless there is good reason not to publish all or part of the material, or to delay the release (Cabinet Office circular -CO (23) 4: Proactive Release of Cabinet Material: Updated Requirements).	New Zealand	
Administrative access	An agency is authorised to release government information held by the agency to a person in response to an informal request by the person (<i>Freedom of Information Act 2016</i> (ACT) s 8).	ACT	<ul style="list-style-type: none"> • Reduce the number of requests received by agencies and ministers
Oversight	Oversight by a Parliamentary Committee.	ACT: ACT Legislative Assembly; ACAT (for Ombudsman review decisions).	<ul style="list-style-type: none"> • Improve trust and confidence in the regulator • Improve trust and confidence in the system.
		QLD: Legal Affairs and Community Safety Committee (<i>Right to Information Act 2009</i> (QLD) s 189).	
		NSW: Joint Parliamentary Committee (s44 <i>Government Information (Information Commissioner) Act 2009</i> (NSW)).	

Category	Feature	Jurisdiction	Benefit
		SA: Crime and Public Integrity Policy Committee	
		TAS: Joint Standing Committee on Integrity	
VIC: Accountability & Oversight Committee of Parliament			
WA: Standing Committee on Public Administration, Legislative Council, WA Parliament			
	Shared leadership/promotion of Open Government: NZ Ombudsman, Minister Responsible for State Services and State Services Commissioner (publication of FOI statistics)	New Zealand	<ul style="list-style-type: none"> • Improve trust and confidence in the regulator • Improve trust and confidence in the system.
Functions and role of the Information Commissioner	Extensions of time provided by Ombudsman if the applicant has refused or not agreed to the extension (<i>Freedom of Information Act 2016 (ACT) s 42</i>).	ACT	<ul style="list-style-type: none"> • Assist in the timely discharge of regulatory functions
	Investigate complaints about an agency or Minister's action, or failure to take action, in relation to any of the functions (<i>Freedom of Information Act 2016 (ACT) s 69</i>)	ACT	<ul style="list-style-type: none"> • Improve trust and confidence in the regulator • Improve trust and confidence in the system.
	Review, upon application, a decision about making open access information available (<i>Freedom of Information Act 2016 (ACT) s 74</i>).	ACT	<ul style="list-style-type: none"> • Improve trust and confidence in the regulator • Improve trust and confidence in the system.
	Make recommendations to agencies (GIPA s 92) including recommendations: that an agency reconsider a matter; as to public interest against disclosure; and as to general procedure of an agency (GIPA Act ss 93-95).	NSW	<ul style="list-style-type: none"> • Assist in the timely discharge of regulatory functions • Improve trust and confidence in the regulator

Category	Feature	Jurisdiction	Benefit
	Requirement to identify opportunities and processes for early resolution – including mediation – to promote settlement of an external review application (<i>Right to Information Act</i> (QLD) s 90).	QLD	<ul style="list-style-type: none"> • Improve trust and confidence in the system.
	Provide advice, education and guidance to agencies in relation to compliance with any professional standards (<i>Freedom of Information Act 1982</i> (VIC) s 6I(2)(b)).	Victoria	<ul style="list-style-type: none"> • Improve trust and confidence in the regulator • Improve trust and confidence in the system.
Powers of compulsion and procedures	Declaration that information is open access information (<i>Freedom of Information Act 2016</i> (ACT) s 65).	ACT	<ul style="list-style-type: none"> • Improve trust and confidence in the regulator • Improve trust and confidence in the system.
	Require parties to attend mediation to resolve review matter (<i>Freedom of Information Act 2016</i> (ACT) s 81).	ACT	<ul style="list-style-type: none"> • Assist in the timely discharge of regulatory functions
	Parties to a complaint may be represented when required to appear (<i>Freedom of Information Act 1992</i> (WA) s 70(6)).	WA	<ul style="list-style-type: none"> • Improve trust and confidence in the regulator
	The decision of the Commissioner is to be regarded as the decision of the agency and has effect accordingly (<i>Freedom of Information Act 1992</i> (WA) s 76(7))	WA	<ul style="list-style-type: none"> • Improve trust and confidence in the system.
	The Commissioner has to arrange to have his or her decisions published in full or in an abbreviated, summary or note form whichever is appropriate in order to ensure that the public is adequately informed of the grounds on which such decisions are made. (<i>Freedom of Information Act 1992</i> (WA) s 76(8))	WA	
Review/appeal avenue including fees and charges	Merits review undertaken by Civil and Administrative Tribunal (GIPA Act Pt 5 div 4).	NSW	
	NCAT may refer systemic issues to IC (GIPA Act s 111).	NSW	
	No review by IC if decision is or has been the subject of NCAT review (GIPA Act s 98).	NSW	
	Provides for appeals to the Supreme Court (<i>Freedom of</i>	WA	

Category	Feature	Jurisdiction	Benefit
	<i>Information Act 1992 (WA) Division 5)</i>		
Information commissioner review time-frames	The Ombudsman may suspend the review process for up to 30 working days to facilitate mediation (<i>Freedom of Information Act 2016 (ACT) s 80A(2)</i>).	ACT	<ul style="list-style-type: none"> • Assist in the timely discharge of regulatory functions • Improve trust and confidence in the regulator • Improve trust and confidence in the system.
	A statutory 40-day time-frame for IC review commences when the IC receives the information necessary to complete the review (GIPA Act s 92A). Extensions are available by agreement with the applicant.	NSW	

COMMISSIONER BRIEF

Number 17

- Various reports over the past decade have proposed amendments relating to the FOI Act. A summary of the reports, proposed recommendations and an assessment of whether they have been implemented are set out at **Appendix A**.
 - The issues discussed in these reports include:
 - a review of the operation of the FOI Act or parts of the FOI Act:
 - Review of Charges under the FOI Act (2011) (OAIC)
 - Review of the FOI Act (2013) (Hawke review)
 - specific recommendations to broaden the remit of a particular exemption or exempt particular agencies
 - Review of the FOI Act (2013) (Hawke review) (The FOI Act be amended to make the Department of the Senate, the Department of the House of Representatives and the Department of Parliamentary Services subject to the FOI Act only in relation to documents of an administrative nature. The FOI Act should also be amended to provide an exclusion for the Parliamentary Librarian)
 - Our Public Service Our Future - Independent Review of the Australian Public Service (2019) (Thodey) (Exempt deliberative material from release; s 47C)
 - COAG Legislation Amendment Bill 2021 (The cabinet exemption under s 34 to include 'national cabinet')
 - specific recommendations to improve culture and transparency in decision-making and reflect the public interest:
 - Royal Commission into the Robodebt Scheme (2023 report)
 - Report – Inquiry into Press Freedom (2021 report)
 - Inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press (2020 report)
 - Recommendations that have been implemented or principally given effect relate mainly to:
 - guidance in relation to the establishment of administrative access schemes
 - delegated decision making and
 - promotion of guidance.
- See **Appendix B** for more detail.
- For specific legislative proposals, see also '**Comm Brief – Proposed amendments to the FOI Act**'.

Appendix A: Reports involving the FOI Act

Inquiry	Author	Purpose	Relevant outcome/findings/recommendations	FOI-related recommendations implemented?	OAIC submission link
Royal Commission into the Robodebt Scheme (2023 report)	Catherine Holmes AC SC, Royal Commissioner	The Royal Commission was established by Letters Patent to inquire into the Robodebt Scheme.	<p>'Closing observation' that Section 34 of the FOI Act should be repealed and that</p> <p><i>the Commonwealth Cabinet Handbook should be amended so that the description of a document as a Cabinet document is no longer itself justification for maintaining the confidentiality of the document. The amendment should make clear that confidentiality should only be maintained over any Cabinet documents or parts of Cabinet documents where it is reasonably justified for an identifiable public interest reason (page 657).</i></p> <p>Additionally, identified as a barrier to engagement with Centrelink, the Commission heard evidence of individuals being advised they needed to apply for documents via FOI, that there were delays in the documents being released, and that documents once received were voluminous (page 329).</p>	Not at this stage – generally, the Government is considering the recommendations and will provide a response in due course.	The OAIC did not make a public submission.
COAG Legislation Amendment Bill 2021	Senate Finance and Public Administration Legislation Committee	To amend a range of legislation to reflect the cessation of COAG and the introduction of National Cabinet and to expand the meaning of 'Cabinet' in several Acts to make it clear that where Commonwealth legislation has existing provisions to protect from disclosure the deliberations and decisions of the Cabinet and its committees, the same protections apply to the deliberations and decisions of the National Cabinet and its committees.	The Bill lapsed with the dissolution of Parliament on 11 April 2022.	No – the Bill lapsed.	Submission 11.pdf The OAIC submitted: <ul style="list-style-type: none"> • The expansion of the Cabinet exemption in s 34 to National Cabinet and its committees would remove public access to all National Cabinet documents falling within that exemption until the open access period expires. • Formerly COAG and its committees were not subject to a specific exemption in the FOI Act. • Existing provisions (including ss 447B and 47C) provide an adequate framework to balance confidentiality of opinions, advice, recommendations and deliberations that occur as part of government decision making – including by National Cabinet – with the public's interest in and right to access government-held information.

Inquiry into the operation of Commonwealth Freedom of Information (FOI) Laws

					<ul style="list-style-type: none"> The proposed amendments provide that documents relating to the National Cabinet would be exempt from disclosure without consideration of public interest factors. The public interest test is considered at the time a decision is made and gives effect to the objects of the FOI Act while allowing decision makers to balance any countervailing harm that may result from giving access. It enables each document to be assessed on a case-by-case basis at a point in time, and recognises that the passage of time may reduce the likely harm resulting from disclosure. A consequence of the proposed amendments is that National Cabinet documents will be unable to be accessed by the public for either 20 or 30 years. The OIAC recommends that consideration be given to additional legislative measures to require proactive release of some National Cabinet information. This could include a legislative commitment to proactively publishing National Cabinet and Cabinet information, such as agendas, summary of meeting outcomes and key documents, without revealing the substance of confidential deliberations (for example, through amendments to Part II of the FOI Act (IPS)).
Data Availability and Transparency Bill 2020 [Provisions] and Data Availability and Transparency (Consequential	Senate Standing Committee on Finance and Public Administration	To inquire into the Bills proposes to amend the FOI Act to exempt agencies from the operation of the FOI Act in relation to specified documents, including documents that were shared with or through	Passed both Houses on 30 March 2022. No FOI recommendations in final report. Recommendation 3 related to privacy. Recommendation 3 The committee recommends that consideration is given to whether amendments could be made to the bill, or further clarification added to the explanatory memorandum to provide additional guidance regarding privacy protections, particularly	No FOI recommendations made.	Submission 16.pdf The OIAC submitted that the proposed amendments would effectively exempt any data that government agencies share with each other through the scheme. This does not extend to documents that are outputs within the meaning of the DAT Bill.

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Amendments) Bill 2020	(April 2021)	agencies under cl 13(1) of the DAT Bill, and data that has been enhanced (for example, integrated or cleaned) by an Accredited Data Service Provider.	in relation to the de-identifying of personal data that may be provided under the bill's data-sharing scheme.		<p>The Explanatory Memorandum notes that agencies may still grant access to copies of datasets that are held outside of the DAT scheme.</p> <p>The OAIC is concerned that the proposal is unnecessarily broad and risks misalignment with the objects of the FOI Act to provide a fundamental legal right to access to documents and this reduces the information access rights of individuals, impacting on their ability to seek access to their own personal information and understand how agencies are using this information.</p> <p>Existing exemptions under the FOI Act may apply should an FOI request for data shared under the scheme be received (ss 33, 45, 47, 47B, 47D, 47F, 47G, 47H and 47J may be relevant to consider).</p>
Report – Inquiry into Press Freedom (2021 report)	Senate Environment and Communications References Committee	The Senate referred matters relating to press freedom for Inquiry after the AFP executed two search warrants in relation to several Australian journalists. Terms of reference include disclosure and public reporting of sensitive/ classified information, and the adequacy of government referral practices in relation to leaks of sensitive/ classified information.;	<p>Recommendation 2 <i>The committee recommends that the Australian Government work with the Office of the Australian Information Commissioner to identify opportunities to promote a culture of transparency consistent with the objectives of the Freedom of Information Act 1982 among Ministers, Senior Executive Service and other Freedom of Information decision-makers.</i></p> <p>The committee accepted the position presented by the media that agencies' treatment of FOI applications impedes the ability of journalists to report matters of public interest. It considers that this undermines the primary objective of the FOI Act and its underlying principle of open and transparent government.</p> <p>The committee also endorsed the PJCIS recommendation (below) about ensuring consistency in the application of FOI legislation, however, it expressed its view that that there are more deeply embedded issues—such as risk aversion—creating a culture within the public sector that does not value and is opposed to the release of government information in appropriate (non-exempted) circumstances.</p>	It appears government have not yet responded?: Press Freedom – Parliament of Australia (aph.gov.au)	<p>It appears we contributed to a broader government submission: D2023/012491</p> <p>48 Public Submissions were lodged to the Inquiry - Press Freedom Submissions APH</p>
Inquiry into the impact of the exercise of law enforcement	Parliament Joint Committee on Intelligence	Referred by the Attorney-General under s 29(1)(b)(ia) of the <i>Intelligence Services</i>	Recommendation 16: <i>The Committee recommends that the Australian Government review and prioritise the promotion and training of a uniform FOI culture across departments, to ensure that application of the processing requirements and</i>	The Government agrees to this recommendation. In relation to the OAIC's role, the Government response states that the OAIC will	Information Commissioner appeared before the PJCIS on Friday 7 February 2020: preparation brief at D2020/002011 . OAIC public

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<p>and intelligence powers on the freedom of the press (2020 report)</p>	<p>and Security (PJCIS)</p>	<p>Act 2001. The purpose was to report on the impact of the exercise of law enforcement and intelligence powers on the freedom of the press.</p>	<p><i>exemptions allowed under the Freedom of Information Act 1982 are consistently applied</i> (page 135-137). The PJCIS noted stakeholder concerns regarding FOI requests and the challenges faced by departments in balancing transparency with factors that would make the release of information contrary to the public interest.</p>	<p>provide guidance and advice to FOI practitioners through new and updated FOI Guidelines, promoted in ICON newsletters and further promotion of the 'FOI Essentials toolkit for Australian Government agencies and ministers'.</p> <p>AGD also address implementation by OAIC in their submission to the FOI Inquiry:</p> <p><i>Consistent with this recommendation, former FOI Commissioner Hardiman commenced a programme of work (with the OAIC's FOI Branch) to 'develop a shared culture within the Australian Government that supports and encourages compliance with the FOI Act as well as the proactive disclosure of information held by agencies'. This included strategic engagement with senior leadership across Commonwealth agencies to improve practical administration of the FOI Act and further work on updating FOI guidelines to support practitioner compliance with the legislation.</i></p> <p><i>Subsequent to the PJCIS recommendation, the OAIC has published new guidance for FOI practitioners including updates to Parts 3, 4, 10, 11 and 12 of the FOI Guidelines – which allows for consistent application of the FOI Act by practitioners. In December 2022 the Information Commissioner released for external consultation a revised draft guideline relating to the Information Publication Scheme (IPS) in Part 13 of the FOI Guidelines.</i></p>	<p>submission (PDF) and Supplementary to submission (PDF)</p>
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Inquiry into the operation of Commonwealth Freedom of Information (FOI) Laws

<p>Report of the Comprehensive Review of the Legal Framework of the National Intelligence Community ('The Richardson Review')(December 2020)</p>	<p>Mr Dennis Richardson AC</p>	<p>To examine the effectiveness of the legislative framework for the National Intelligence Community (NIC) and prepare findings and recommendations for any reforms.</p>	<p>Rec 138 The collection, retention and use of reference information by AUSTRAC, Home Affairs and the AFP should continue to be regulated by the Privacy Act and specific statutory frameworks.</p> <p>Rec 84 ASIS, ASIO, ASD, DIO and ONI should continue to be exempt from the operation of the Freedom of Information Act. Rec 185 The Department Home Affairs, including its Intelligence Division, should remain subject to the Freedom of Information Act.</p> <p>Rec 186 The Freedom of Information Act should be amended to remove AGO's exemption in respect of its non-intelligence function.</p> <p>Rec 187 The ACIC should remain subject to the Freedom of Information Act.</p> <p>Rec 192 The Freedom of Information Act and Archives Act should be amended so that the IGIS is only required to provide evidence that addresses the damage that would, or could reasonably be expected to, arise from the release of material where the matter involves one or more of the agencies that the IGIS oversees.</p>	<p>N/A (no change recommended)</p> <p>N/A (no change recommended)</p> <p>The AGO remains exempt from the operation of the FOI Act (see Div 2, Part 1, Schedule 2 to the FOI Act). However, s 7(2A) has been amended to exclude from that exemption information that originated/was received from the Australian Hydrographic Office (part of the AGO) in the performance of its functions under subsection 223(2) of the Navigation Act 2012).</p> <p>N/A (no change recommended)</p> <p>Section 55ZA has been amended to implement this recommendation.</p>	<p>D2019/000042</p> <p>Submissions were not published.</p> <p>The OAIC submission mainly relates to privacy issues.</p> <p>However the OAIC indicated in principle support to a submission by the IGIS that they only be required to provide evidence that addresses the damage that would, or could reasonably be expected to, arise from the release of material where the matter involves one or more of the agencies the IGIS oversees.</p>
<p>Our Public Service Our Future - Independent Review of the Australian Public Service (2019 report)</p>	<p>David Thodey AO and the independent panel of the APS review</p>	<p>Commissioned by the Australian Government to identify reforms to ensure the APS is fit-for-purpose for the coming decades, and to guide future reform activities.</p>	<p>Recommendation 8: <i>Harness external perspectives and capability by working openly and meaningfully with people, communities and organisations, under an accountable Charter of Partnerships</i></p> <p>Further details around this recommendation include a review of FOI arrangements:</p> <p><i>Government to commission a review of privacy, FOI and record-keeping arrangements to ensure that they are fit for the digital age, by: supporting greater transparency and disclosure, simpler administration and faster decisions, while protecting personal data and other information, and exempting</i></p>	<p>Government response to relevant aspect of Recommendation 8: <i>The Government notes the proposal for a new wide-ranging review of privacy, FOI and record-keeping arrangements. The Government's principal focus is to ensure that agencies effectively implement current requirements, addressing practical problems where required. Any further reform to these arrangements would be considered separately to the</i></p>	<p>Appears no OAIC submission was lodged. Submissions APS Review</p> <p>Though the AIC emailed David Thodey - D2019/001023 suggests perhaps the OAIC were not intending providing a submission. The AIC noted 'we look forward to the report and would be interested in feedback about privacy and info access issues themes may be have been raised'...</p>

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			<p><i>material prepared to inform deliberative processes of government from release under FOI (page 122).</i></p> <p>Recommendation 11 : <i>Strengthen APS partnerships with ministers by improving support and ensuring clear understanding of roles, needs and responsibilities.</i></p> <p><i>...Implementation guidance</i></p> <ul style="list-style-type: none"> <i>Exempt deliberative material from release under FOI (recommendation 8).</i> 	<p><i>Government's response to the APS Review.</i></p> <p>For further information, see: D2020/010384.</p>	
Administration of the Freedom of Information Act 1982 (September 2017)	ANAO	To assess the effectiveness and efficiency of entities' implementation of the FOI Act	<p>Recommendation 1 The Office of the Australian Information Commissioner should develop and publish a statement of its regulatory approach based on an assessment of risks and impacts associated with entity non-compliance with the requirements of the FOI Act.</p> <p>Suggestion - the ANAO suggested the OAIC consider developing an approach to verifying the quality of FOI data reported to the OAIC by entities.</p>	<p>Implemented – published February 2018 Freedom of information regulatory action policy OAIC</p> <p>Implemented – the OAIC now compares agencies' statistics with previous years to identify anomalies and also conducts QA on data entered within the current year before accepting it as final.</p>	<p>D2017/002190 – OAIC comment March 2017</p> <p>D2017/007979 – Commissioner brief September 2017</p>
Inquiry into national security bills	Parliamentary Joint Committee on Intelligence and Security (PJCIS) June 2018	To review the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2018 which proposed changes to the Criminal Code Act 1995 and the Crimes Act 1914 to introduce new offences relating to the secrecy of information.	<p>The Bill passed both houses on 28 June 2018 and received royal assent on 29 June 2018.</p> <p>Proposed consequential amendments to FOI Act are below.</p> <p>Item 18</p> <p>1684. Subsection 78(2) of the <i>Freedom of Information Act 1982</i> requires approval to be sought before an authorised person can enter or carry on an investigation at a place referred to in paragraph 80(c) of the Crimes Act (see paragraph 78(1)(a)).</p> <p>1685. Declarations were made by the Governor-General under section 80(c) between 1959 and 1986. The declarations, which mainly relate to Defence premises, are archaic and have not been updated or used for many years. Section 80 of the Crimes Act is being repealed by Schedule 2 of the Bill.</p> <p>1686. Item 18 will repeal paragraph 78(1)(a) to remove the reference to paragraph 80(c) of the Crimes Act.</p>	<p>The final EM notes the following changes were introduced following the Committee stage:</p> <p>... the amendments will also improve the ability of persons at risk of deprivation of liberty to justify their actions and defend the criminal charge against them by creating additional specific defences applying to the secrecy offences for information dealt with, or communicated to, to the Australian Information Commissioner for the purpose of the Commissioner exercising a power or performing a function or duty or dealing with information, or communicating information, in accordance with the <i>Freedom of Information Act 1982</i>.</p>	<p>Inquiry into national security bills — submission to Parliamentary Joint Committee on Intelligence and Security OAIC</p> <p>The OAIC suggested that the Bill or Explanatory Memorandum be clarified to explain that the secrecy provisions are not intended to impact on the right to request access to an individual's personal information under APP 12 of the Privacy Act, or to obtain access under the FOI Act.</p>
Review of the Freedom of	Dr Allan Hawke AC	Report was required by section 93B of the FOI		Recommendations	Submission: D2013/000919 (December 2012)

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Information Act 1982 and Australian Information Commissioner Act 2010 report (2013 report)	<p>Act and section 33 of the IC Act by then Attorney-General Nicola Roxon.</p> <p>The terms of reference were to consider the extent to which the FOI and AIC Acts and other laws provide an effective framework for access to government information.</p>	<p>Recommendation 1 – Further Comprehensive Review 1(a) The Review recommends that a comprehensive review of the FOI Act be undertaken. 1(b) This review might also consider interaction of the FOI Act with the <i>Archives Act 1983</i>, <i>Privacy Act 1988</i> and other related legislation.</p>	Support	<p><i>40 recommendations to streamline procedures, reduce complexity and increase the effectiveness and efficiency of agencies and the OAIC – additionally; recommendations concerning the scope of some FOI exemptions.</i></p>	<p>On 21 October 2013 and 15 April 2014, the Information and Freedom of Information Commissioners provided information to the Cth A-G in relation to these recommendations: D2013/091991; D2014/015194</p> <p>OAIC assessment of recommendations in 2018 view (D2018/012248)</p>
		<p>Recommendation 2 – Online Status of FOI Reviews and Complaints The Review recommends the OAIC consider establishing an online system which enables agencies and applicants involved in a specific FOI review or FOI complaint investigation to monitor progress of the review or complaint.</p>	Support in principle; resourcing and infrastructure required	<p>Rec 3: Delegation of Functions and Powers (Implemented) The Review recommends that section 25 of the Australian Information Commissioner Act 2010 be amended to allow for the delegation of functions and powers in relation to review of decisions imposing charges under section 29 of the FOI Act.</p>	
		<p>Recommendation 3 – Delegation of Functions and Powers The Review recommends that section 25 of the <i>Australian Information Commissioner Act 2010</i> be amended to allow for the delegation of functions and powers in relation to review of decisions imposing charges under section 29 of the FOI Act.</p>	Support	<p>Rec 15: Parliamentary Departments (Partially Implemented) The Review recommends the FOI Act be amended to make the Department of the Senate, the Department of the House of Representatives and the Department of Parliamentary Services subject to the FOI Act only in relation to documents of an administrative nature. The FOI Act should also be amended to provide an exclusion for the Parliamentary Librarian.</p>	
		<p>Recommendation 4 – Power to Remit Matters to Decision-maker for Further Consideration The Review recommends the FOI Act be amended to provide an express power for the Information Commissioner to remit a matter for further consideration by the original decision-maker.</p>	Support; similar powers exist in the <i>Administrative Appeals Act 1975</i>	<p>Rec 21(a): OAIC consider developing appropriate guidance/assistance to encourage agencies to develop administrative access schemes</p>	
		<p>Recommendation 5 – Resolution of Applications by Agreement The Review recommends the FOI Act be amended to make it clear that an agreed outcome finalises an Information Commissioner review and in these circumstances a written</p>	Further consideration required, including terms of agreement	<p>Rec 37: Minimum Timeframe for Publication of Disclosure Log The Review recommends that there should be a period of five working days before documents released to an applicant are published on the disclosure log.</p>	

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			<p>decision of the Information Commissioner is not required.</p>		<p>However, it considers that it would be better for this to be set out in guidelines rather than in the FOI Act itself and recommends the OAIC consider amending its guidelines accordingly.</p>
			<p>Recommendation 6 – Third Party Review Rights The Review recommends the FOI Act be amended to provide that only the applicant and the respondent are automatically a party to an Information Commissioner review. Any other affected person would be able to apply to be made a party to the review.</p>	<p>Further consideration required</p>	
			<p>Recommendation 7 – Extensions of Time The Review recommends the FOI Act be amended to:</p> <ul style="list-style-type: none"> • remove the requirement to notify the OAIC of extensions of time by agreement; and • restrict the OAIC’s role in approving extensions of time to situations where an FOI applicant has sought an Information Commissioner review or made a complaint about delay in processing a request. 	<p>Further consideration required, including relevant oversight into delay in processing timeframes</p>	
			<p>Recommendation 8 – Agreement to Extension of Time Beyond 30 Days The Review recommends that section 15AA of the FOI Act be amended to provide an agency or minister can extend the period of time beyond an additional 30 working days with the agreement of the applicant.</p>	<p>Support in principle, subject to notification</p>	
			<p>Recommendation 9 – Extension of Time for Consultation on Cabinet-related Material 9(a) The Review recommends the FOI Act be amended to allow an agency to extend the period of time for notifying a decision on an FOI request by up to 30 working days where</p>	<p>Further consideration required</p>	

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			<p>consultation with the Department of the Prime Minister and Cabinet on any Cabinet-related material is required.</p> <p>9(b) The Cabinet Handbook should be revised to accord with this recommendation.</p>			
			<p>Recommendation 10 – Two-Tier External Review The Review recommends that the two-tier external review model be re-examined as part of the comprehensive review of the FOI Act.</p>	Further consideration required		
			<p>Recommendation 11 – Law Enforcement and Public Safety The Review recommends the exemption for documents affecting the enforcement of law and protection of public safety in section 37 of the FOI Act be revised to include the conduct of surveillance, intelligence gathering and monitoring activities. This revision should also cover the use of FOI as an alternative to discovery in legal proceedings or investigations by regulatory agencies.</p>	Further consideration required		
			<p>Recommendation 12 – Cabinet Documents The Review recommends the exemption for Cabinet documents be clarified by including definitions of ‘consideration’ and ‘draft of a document’.</p>	Further consideration required		
			<p>Recommendation 13 – Ministerial Briefings The Review recommends that the FOI Act be amended to include a conditional exemption for incoming government and incoming minister briefs, question time briefings and estimates hearings briefings.</p>	Further consideration required		

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			<p>Recommendation 14 – Information as to Existence of Documents The Review recommends that section 25 of the FOI Act be amended to cover the Cabinet exemption.</p>	Further consideration required		
			<p>Recommendation 15 – Parliamentary Departments The Review recommends the FOI Act be amended to make the Department of the Senate, the Department of the House of Representatives and the Department of Parliamentary Services subject to the FOI Act only in relation to documents of an administrative nature. The FOI Act should also be amended to provide an exclusion for the Parliamentary Librarian.</p>	Further consideration required		
			<p>Recommendation 16 – Exclusion of Australian Crime Commission from the FOI Act The Review recommends the Australian Crime Commission be excluded from the operation of the FOI Act. Section 7(2A) of the FOI Act should be amended to refer to an ‘intelligence agency document’ of the Australian Crime Commission.</p>	Further consideration required		
			<p>Recommendation 17 – Review of Agencies Listed in Part I of Schedule 2 to the FOI Act 17(a) The Review recommends the intelligence agencies remain in Part I of Schedule 2 to the FOI Act. The parts of the Department of Defence listed in Division 2 of Part I of Schedule 2 should also remain. 17(b) All other agencies currently in Part I of Schedule 2 should justify their exclusion from the FOI Act to the satisfaction of the Attorney-General. If they do not do this within 12</p>	Further consideration required		

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			<p>months, they should be removed.</p> <p>17(c) The Attorney-General should also consider whether there is a need to include any other agencies in Schedule 2.</p>			
			<p>Recommendation 18 – Criteria for Assessment of Agencies Exempt in Respect of Particular Documents</p> <p>The Review recommends the FOI Act contain criteria for assessment of agencies which are exempt from the FOI Act in respect of particular documents.</p>	Further consideration required		
			<p>Recommendation 19 – Review of Agencies Listed in Part II of Schedule 2 to the FOI Act</p> <p>19(a) The Review recommends Section 47 of the FOI Act be amended to make clear that it applies to documents that contain information about the competitive or commercial activities of agencies.</p> <p>19(b) All agencies in Part II of Schedule 2 to the FOI Act should justify their exclusion from the FOI Act to the satisfaction of the Attorney-General. If they do not do so, they should be removed from Part II of Schedule 2.</p> <p>19(c) The Attorney-General should also consider whether there is a need to include any other agencies in Part II of Schedule 2.</p>	Further consideration required		
			<p>Recommendation 20 – Review of Agencies Listed in Schedule 1 to the FOI Act</p> <p>20(a) The Review recommends Schedule 1 to the FOI Act be amended to repeal the bodies listed, as they no longer exist.</p>	Further consideration required		

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			<p>20(b) The Attorney-General should also consider whether there is a need to include any tribunals, authorities or bodies in Schedule 1.</p>			
			<p>Recommendation 21 – Administrative Access Schemes 21(a) The Review recommends the OAIC consider the development of appropriate guidance and assistance to encourage agencies to develop administrative access schemes. 21(b) While the Review acknowledges the desirability of encouraging the use of administrative access schemes, it does not believe it appropriate for this to be done by reintroduction of application fees for FOI requests.</p>	21(a): Implemented		
			<p>Recommendation 22 – FOI Processing Charges 22(a) The Review recommends that a flat rate processing charge should apply to all processing activities, including search, retrieval, decision-making, redaction and electronic processing. No charge should be payable for the first five hours of processing time. Processing time that exceeds five hours but is ten hours or less should be charged at a flat rate of \$50. The charge for each hour of processing time after the first ten hours should be \$30 per hour. 22(b) The current provisions for no processing charges for access to an applicant's personal information and</p>	22(a): Further consideration required 22(b): Support		

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			for waiver of charges should continue to apply.			
			<p>Recommendation 23 – FOI Access Charges</p> <p>23(a) The Review recommends that a flat rate access charge should apply to all access supervision activities of \$30 per hour and that no other access charges should apply.</p> <p>23(b) The current provisions for no charges for access to an applicant's personal information and for waiver of charges should continue to apply.</p>	<p>23(a): Further consideration required</p> <p>23(b): Support</p>		
			<p>Recommendation 24 – Ceiling on Processing Time for FOI requests</p> <p>The Review recommends introduction of a 40 hour processing time ceiling for FOI requests.</p>	<p>Unsupported by IC review/AAT decisions</p>		
			<p>Recommendation 25 – Reduction and Waiver of FOI Charges</p> <p>25(a) The Review recommends that an agency should be able to waive or reduce charges in full, by 50% or not at all. However, it considers that it would be better for these options to be set out in guidelines rather than in the FOI Act itself and recommends the OAIC consider amending its guidelines accordingly.</p> <p>25(b) The Review believes that the current requirement to consider whether access to a document would be in the general public interest or in the interest of a substantial section of the public should remain unchanged.</p>	<p>Further consideration required</p>		
			<p>Recommendation 26 – Reduction Beyond Statutory Timeframe</p> <p>26(a) The Review recommends adoption of a sliding scale for</p>	<p>Further consideration required; note objects of the Act to</p>		

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			<p>reduction of charges where decisions are not notified within statutory timeframes in accordance with recommendation 6 of the FOI Charges Review.</p> <p>26(b) No charge should be payable if the delay is longer than 30 working days.</p>	<p>facilitate prompt access at the lowest reasonable cost</p>		
			<p>Recommendation 27 – Application Fees for Information Commissioner Review for Review of Access to Non-personal Information</p> <p>27(a) The Review recommends that an application fee of \$400 apply for a review of an FOI decision for access to non-personal information. This fee would be reduced to \$100 in cases of financial hardship.</p> <p>27(b) If proceedings terminate in a matter favourable to the applicant, a \$300 refund would apply. There would be no refund of the reduced fee.</p> <p>27(c) No fee would apply for an Information Commissioner review of an access grant decision by an affected third party.</p> <p>27(d) In all other cases, fees would be payable for Information Commissioner review of decisions for access to non-personal information.</p> <p>27(e) There would be no remission of the fee where an applicant has first sought internal review or where internal review is not available.</p>	<p>Further consideration required; note objects of the Act regarding the lowest reasonable cost</p>		
			<p>Recommendation 28 – Indexation of Fees and Charges</p> <p>The Review recommends that all fees and charges are adjusted every two years in accordance with the CPI</p>	<p>Further consideration required; note objects of the Act</p>		

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			based on the federal courts/AAT provision for biennial fee increases.	regarding the lowest reasonable cost		
			<p>Recommendation 29 – Timeframes for Applicants to Respond to Agency Decisions</p> <p>29(a) The Review recommends that an applicant should be required to respond within 30 working days after receiving a notice under section 29(8), advising of a decision to reject wholly or partly the applicant's contention that a charge should not be reduced or not imposed. The applicant's response should agree to pay the charge, seek internal review of the agency's decision or withdraw the FOI request.</p> <p>29(b) If an applicant fails to respond within 30 working days (or such further period allowed by an agency) the FOI request should be deemed to be withdrawn.</p>	Further consideration required; note objects of the Act regarding the lowest reasonable cost		
			<p>Recommendation 30 – Practical Refusal Mechanism</p> <p>The Review recommends section 24AA(1)(b) of the FOI Act be repealed to make it clear that the practical refusal mechanism can only be used after an applicant has provided information to identify the documents sought.</p>	Further consideration required, including obligation on agencies to assist and applicants' knowledge of documents/agency document infrastructure		
			<p>Recommendation 31 – Time Periods in the FOI Act to be Specified in Working Days</p> <p>31(a) The Review recommends that where appropriate, the FOI Act be amended so that time periods are specified in terms of 'working days' rather than calendar days.</p>	Further consideration required, noting impact on FOI processing timeframes around agency closure period		

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			<p>31(b) The timeframe for processing an FOI request (not taking into account any extensions of time) should be 30 working days. Provision should be made to exclude any period in which an agency is closed such as during the 'shut-down' period between Christmas and New Year.</p>		
			<p>Recommendation 32 – Repeat or Vexatious Requests The Review recommends the FOI Act be amended to permit agencies to decline to handle a repeat or vexatious request or requests that are an abuse of process, without impacting on the applicant's ability to make other requests or remake the request that was not accepted. The applicant can appeal against such a decision to the OAIC.</p>	<p>Further consideration required given that a declaration will remove a person's legally enforceable right and that the vexatious applicant declaration power often resides with the judiciary in other jurisdictions</p>	
			<p>Recommendation 33 – Anonymous Requests 33(a) The Review recommends the FOI Act be amended so that an FOI request cannot be made anonymously or under a pseudonym. 33(b) It should be necessary for an applicant to provide an address in Australia.</p>	<p>Further consideration required</p>	
			<p>Recommendation 34 – Inspector-General of Intelligence and Security The Review recommends the FOI Act and the <i>Archives Act 1983</i> be amended to clarify procedural aspects concerning the Inspector-General of Intelligence and Security giving evidence in FOI and archive matters before the AAT and FOI matters before the Information Commissioner.</p>	<p>Support in principle</p>	

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			<p>Recommendation 35 – Amendment of Personal Records and the Archives Act The Review recommends the FOI Act be amended to enable a personal record to be amended when the amendment is authorised under the <i>Archives Act 1983</i>.</p>	Further consideration required		
			<p>Recommendation 36 – Single Website for all Disclosure Logs The Review recommends the disclosure log for each agency and minister should be accessible from a single website hosted by either the OAIC or data.gov.au to enhance ease of access.</p>	Further consideration required; consider whether other jurisdictions' have consolidated websites		
			<p>Recommendation 37 – Minimum Timeframe for Publication of Disclosure Log The Review recommends that there should be a period of five working days before documents released to an applicant are published on the disclosure log. However, it considers that it would be better for this to be set out in guidelines rather than in the FOI Act itself and recommends the OAIC consider amending its guidelines accordingly.</p>	Further consideration required		
			<p>Recommendation 38 – Copyright The Review recommends the Government consider issues concerning the interaction of the FOI Act and the potential impact that publication of third party material under the FOI Act may have on a copyright owner's revenue or market.</p>	Support		
			<p>Recommendation 39 – Suspension of FOI Processing During Litigation The Review recommends the FOI Act be amended so that the processing of</p>	Further consideration required		

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			an FOI request is suspended where the applicant has commenced litigation or there is a specific ongoing law enforcement investigation in progress.			
			<p>Recommendation 40 – Backup Tapes</p> <p>The Review recommends the FOI Act be amended so that a search of a backup system is not required, unless the agency or minister searching for the document considers it appropriate to do so.</p>	Further consideration required in light of technological advances/use of apps/Archives guidance regarding document retention		
Review of charges under the Freedom of Information Act 1982: Report to the Attorney-General (2012 report)	Prof. John McMillan, then Australian Information Commissioner	Terms of reference were issued by the Minister for Privacy and Freedom of Information, the Hon Brendan O'Connor MP, to review charges under the FOI Act.	<p>Recommendations</p> <p><i>Four principles proposed to underpin a new charges framework: support of a democratic right; lowest reasonable cost; uncomplicated administration; free informal access as a primary avenue.</i></p>	<p>2018 OAIC officers' views</p> <p>(D2018/012248)</p>	It appears Rec 1 has been implemented – see notes on PJCIS review implementation	The AIC received 23 submissions for consideration, referenced here Review of charges under the Freedom of Information Act 1982: Report to the Attorney-General OAIC
			<p>Recommendation 1 – Administrative access schemes</p> <p>1.1 Agencies are encouraged to establish administrative access schemes by which persons may request access to information or documents that are open to release under the FOI Act.</p> <p>1.2 The details of an administrative access scheme should be set out on an agency's website, and explain:</p> <ul style="list-style-type: none"> how a person may make a request for information or documents that will be provided free of charge (except for reasonable reproduction and postage costs), and the interaction of the administrative access scheme with the FOI Act. 	Support 1.1, 1.2 and 1.4; further consideration required for 1.3		

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			<p>1.3 If an agency establishes an administrative access scheme that is notified on its website, a person who makes an FOI request without first seeking the same information under the scheme may be required by the agency to pay an application fee of \$50.</p> <p>1.4 No FOI application fee shall be payable if a person has first applied under an appropriate administrative access scheme. The FOI request may be made either upon receipt of the agency's response to the administrative access request, or after 30 days if no agency response is received.</p>			
			<p>Recommendation 2 – FOI processing charges</p> <p>2.1 The FOI processing charges referred to in 2.3 and 2.4 should apply to all processing activities, including search, retrieval, decision making, redaction and electronic processing.</p> <p>2.2 No processing charge should be payable for the first five hours of processing time.</p> <p>2.3 The charge for processing time that exceeds five hours but is ten hours or less should be a flat rate charge of \$50.</p> <p>2.4 The charge for each hour of processing time after the first ten hours should be \$30 per hour (or part thereof).</p> <p>2.5 No processing charge should be payable for providing access to a document that contains the applicant's personal information.</p>	Support 2.5; Further consideration required for 2.1-2.4		
			<p>Recommendation 3 – FOI access charges</p> <p>3.1 Supervision of an applicant inspecting documents (or hearing or viewing an audio or visual recording) should be charged at \$30 per hour.</p> <p>3.2 Providing information on electronic storage media (such as a</p>	Further consideration required for all items		

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			<p>disk or USB drive) should be charged at actual cost.</p> <p>3.3 Postage costs should be charged at actual cost.</p> <p>3.4 Printing (including photocopying and other printed copying) should be charged at \$0.20 per page.</p> <p>3.5 Transcription should be charged at actual cost.</p>			
			<p>Recommendation 4 – FOI processing ceiling</p> <p>4.1 An agency or minister should have a discretion to refuse to process a request for personal or non-personal information that is estimated to take more than 40 hours to process. While the estimate of time would be an IC reviewable decision, an agency decision not to process a request above the 40 hour ceiling would not be reviewable.</p> <p>4.2 Before making a decision of that kind the agency or minister must advise the applicant of the estimated processing time and take reasonable steps to assist the applicant to revise the request so that it can be processed in 40 hours or less.</p> <p>4.3 For the purposes of exercising this discretion, an agency or minister may treat two or more requests as a single request, as provided for in s 24(2) of the FOI Act.</p> <p>4.4 The practical refusal mechanism in ss 24, 24AA and 24AB of the FOI Act should be repealed.</p>	Further consideration required for all items, including consideration of impact on access to personal information		
			<p>Recommendation 5: Reduction and waiver</p> <p>5.1 The specified grounds on which an applicant can apply for reduction or waiver of an FOI processing or access charge (but not an FOI application fee) should be:</p> <ul style="list-style-type: none"> • that payment of all or part of the charge would cause financial hardship to the applicant, or 	Further consideration required for all items		

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			<ul style="list-style-type: none"> that release of the documents requested by the applicant would be of special benefit to the public. <p>5.2 The options open to an agency should be to waive the charges in full, by 50% or not at all. The decision would be an IC reviewable decision.</p> <p>5.3 An agency should also have a general discretion not to impose or collect an FOI application fee or processing or access charge, whether or not the applicant has requested it to do so. The exercise of that discretion should not be an IC reviewable decision.</p>			
			<p>Recommendation 6 – Reduction beyond statutory timeframe</p> <p>6.1 Where an agency fails to notify a decision on a request within the statutory timeframe (including any authorised extension) the FOI charge that is otherwise payable by the applicant should be reduced:</p> <ul style="list-style-type: none"> by 25%, if the delay is 7 days or less by 50%, if the delay is more than 7 days and up to and including 30 days <p>by 100%, if the delay is longer than 30 days.</p>	Further consideration required for all items		
			<p>Recommendation 7 – Internal and IC review fees</p> <p>7.1 No fee should be payable for an application for internal review.</p> <p>7.2 No fee should be payable for an application for IC review of an internal review decision or a deemed affirmation on internal review.</p> <p>7.3 An application fee of \$100 should be payable for IC review if an applicant who can apply for internal review has not done so first. The fee of \$100 should not be subject to reduction or waiver.</p>	Support 7.1, 7.2, 7.4; Further consideration required of 7.3		

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			<p>7.4 No fee should be payable for an application for IC review of a decision of a minister, the principal officer of an agency, or a deemed decision of an agency to refuse access to a document or to refuse to amend or annotate a personal record. No fee should also apply to an application for IC review by a third party of a decision to grant access to the FOI applicant.</p>			
			<p>Recommendation 8 – Indexation 8.1 All FOI fees and charges should be adjusted every two years to match any change over that period in the Consumer Price Index, by rounding the fee or charge to the nearest multiple of \$5.00.</p>	Further consideration required for all items		
			<p>Recommendation 9 – Responding to an agency decision 9.1 An applicant should be required to respond within 30 days after receiving a notice under s 29(8), advising of a decision to reject wholly or partly the applicant’s contention that a charge should not be reduced or not imposed. The applicant’s response should agree to pay the charge, seek internal review of the agency’s decision or withdraw the FOI request. 9.2 If an applicant fails to respond within 30 days (or such further period allowed by an agency) the FOI request should be deemed to be withdrawn.</p>	Further consideration required for all items		

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Appendix A: Implemented recommendations

Report	Recommendation	OAIC guidance
Review of Charges under the FOI Act (2011) (OAIC)	Rec 1: Establishment of administrative access schemes	Administrative access
Review of the FOI Act (2013) (Hawke review)	Rec 3: Delegation of Functions and Powers The Review recommends that section 25 of the Australian Information Commissioner Act 2010 be amended to allow for the delegation of functions and powers in relation to review of decisions imposing charges under section 29 of the FOI Act.	Section 25 of the <i>Australian Information Commissioner Act 2010</i> was amended by the <i>Privacy Legislation Amendment (Enforcement and Other Measures) Act 2022</i> with effect from December 2022. Section 25(2) now permits the Information Commissioner to delegate the decision-making under ss 73 and 55K to employees at the Senior Executive Service level. This delegation can be exercised by the Assistant Commissioner, Freedom of information, subject to business rules effective from March 2023.
	Rec 15: Parliamentary Departments The Review recommends the FOI Act be amended to make the Department of the Senate, the Department of the House of Representatives and the Department of Parliamentary Services subject to the FOI Act only in relation to documents of an administrative nature. The FOI Act should also be amended to provide an exclusion for the Parliamentary Librarian.	From approximately 1 July 2013, the Department of the House of Representatives, the Department of the Senate and the Department of Parliamentary Services are excluded from the application of the FOI Act, under s. 68A of the <i>Parliamentary Service Act 1999</i> .
	Rec 21(a): OAIC consider developing appropriate guidance/assistance to encourage agencies to develop administrative access schemes	Administrative access
	Rec 37: Minimum Timeframe for Publication of Disclosure Log The Review recommends that there should be a period of five working days before documents released to an applicant are published on the disclosure log. However, it considers that it would be better for this to be set out in guidelines rather than in the FOI Act itself and recommends the OAIC consider amending its guidelines accordingly.	See Part 14 of the FOI Guidelines: <i>14.13 Agencies and ministers must publish information on the disclosure log within 10 working days of giving the FOI applicant access to the document (s 11C(6)) (see [14.30] below). Where a person requests access to information not published on an agency's disclosure log (s 11C(3)(c)), the agency or minister should provide access to the information within a reasonable period, which should be no more than 5 working days after receiving the request.</i>
Report – Inquiry into Press Freedom (2021 report)	Rec 16: The Committee recommends that the Australian Government review and prioritise the promotion and training of a uniform FOI culture across departments, to ensure that application of the processing requirements and exemptions allowed under the Freedom of Information Act 1982 are consistently applied (page 135-137).	Subsequent to the PJCIS recommendation, the OAIC has published new guidance for FOI practitioners including updates to Parts 3 (processing) 4 (charge), 10 (IC review), 11 (Complaints), 12 (vexatious applicant declaration), 13 (IPS) and 14 (Disclosure log) of the FOI Guidelines – which allows for consistent application of the FOI Act by practitioners. The OAIC has also released for external consultation and feedback: Part 5 (Exemptions), Part 6 (Conditional exemptions), Part 9 (Internal review).

COMMISSIONER BRIEF**Number 18****Proposed amendments to the *Freedom of Information Act 1982* from 2018**

- This brief provides an overview of proposed amendments to the FOI Act received from 2018. The amendments are listed chronologically by date of consultation, with a subject of consultation, considerations and comments from the OAIC and whether the amendments to the FOI Act (or AIC Act) have been implemented.
- **Appendix A** sets out instances where the OAIC has proposed amendments to the FOI Act:
 - The OAIC's proposed amendments have largely been concerned with amendments to increase the OAIC's ability to increase its ability to make decisions under s 55K of the FOI Act or to streamline the IC review or complaint process.
 - The OAIC has also previously proposed legislative amendments in the context of the 2021 *Review of Charges* and the 2013 Review of the FOI Act (Hawke review): see '**Comm Brief –Reports involving the FOI Act**'.
 - The table at Appendix A sets out OAIC proposals into two sections so that consultations/proposals around delegations of FOI Act powers and functions (eventuating in an amendment to s 25 of the Australian Information Commissioner Act in December 2022) are contained in the first section. The second section addresses other packages of reforms suggested by the OAIC.
- **Appendix B** sets out instances where the Attorney-General's Department has requested the OAIC's views regarding proposed amendments to the FOI Act.
 - In many circumstances, the OAIC's views are sought in relation to proposed exemptions for classes of documents or for specific functions of an agency.
 - The OAIC's response has depended on the issues raised, noting that in many instances, the OAIC's view has been that:
 - Agencies should only be excluded from the operation of the FOI Act in exceptional circumstances
 - It is not clear why, on the basis of the information provided to the OAIC for consideration, why the exemption is necessary

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- There are existing exemptions in the FOI Act and no amendments are necessary.
- The table at Appendix B is set out into two sections: AGD proposals and reviews, and Bill scrutinies.
- See also '**Comm Brief – FOI Act Reports**'.

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Appendix A: OAI proposals affecting the FOI Act

Date consulted	Subject of consultation	FOI Act	AIC Act	Considerations and OAI comments (if applicable)	Nature of consultation	TRIM links	Implemented for AIC/ FOI Acts?
Delegations of FOI powers and functions							
Multiple: see below	Delegations of certain FOI Act powers and functions	Interaction with FOI Act	Yes: s 25		See below	See below	Yes: <i>Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022</i> received assent on 12 December 2022.
17/10/2022	Amendment to the Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022: delegations			Resolve the issue around limiting delegations to SES.	Discussed in a meeting with AGD on 17/10/2022		
05/10/2022 to 17/10/22	Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022: Delegations			<p>AGD-initiated discussion about limiting delegations to SES (discussion noted in email of 17 October). AGD administrative law section raised concerns with the proposed amendments to the delegations power (specifically, the repeal of ss 25(e), (g), (h) and (l)). Scrutiny committees have been raising concerns around the scope of delegations and their strong preference is that there is an express limitation in the law that these powers can only be delegated to SES officers.</p> <p>Information Commissioner agreed to alternative approach seeking a new subsection in s 25 of the AIC Act that would seek to limit the delegation of four items to SES officers (ss 55K, 70 and 86 of the FOI Act – as well as s 52 of the Privacy Act – to SES officers only.</p>	s47C [REDACTED]	D2023/018800	<p>The IC may now delegate certain functions to an OAI staff member who is an SES employee:</p> <ul style="list-style-type: none"> making an IC review decision under s 55K exercising the discretion not to investigate a complaint under s 73 notifying on completion of an investigation under s 86
9/08/2022 to 12/08/2022	Australian Information Commissioner Act – Delegations			s47C [REDACTED]	Officer-level correspondence from 9 -15 August 2022	D2023/019337	

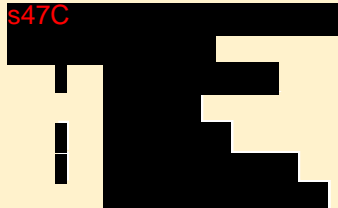
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					Internal email 18/3/2021 (Information Commissioner and OAIC Executive members)	
19/11/2019	<p>Proposed legislative changes primarily to Privacy Act but also in FOI space as follows:</p> <ul style="list-style-type: none"> proposals to ensure timely decision-making including delegation to deputies. s47C [REDACTED] 			Meeting between Deputy Commissioner and Attorney-General's Chief of Staff. Internal email from Deputy Commissioner Elizabeth Hampton.	Following meeting with Chief of Staff – Summary of meeting email on 19/11/2018	D2023/018784 - summary
01/11/2019 and 27/09/2019	<p>Reform package proposed by OAIC</p> <p>OAIC identified room for improvement in the FOI framework and specified possible areas for review</p> <p><i>*Other items addressed in this package and set out in reform package section below.</i></p>			Notes that functions and powers in relation to a decision not to investigate a complaint (s 73), notifying completion of an investigation (s 86) and implementation notices (s 89) must be exercised by the Commissioner herself. Recommends: <ul style="list-style-type: none"> Amend the AIC Act to provide for the delegation of the Information Commissioner's powers in investigating and declining to investigate FOI complaints. Amend the AIC Act to provide for the delegation of the Information Commissioner's powers in IC review matters. Amend s 25 by removing ss 25(e), (f), (g), (h), (i), (l) and allow for specific types of decision to be specified in an instrument. Further OAIC views: the prohibition of delegation in section 25 (concerning the IC review decision-making power) means 	Emails from OAIC to AGD EL2 attaching OAIC documents setting out areas for possible review/reform.	D2023/018782 email of 1/11/2019 D2023/018781 email of 27/09/2019.

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				<p>IC review decisions can only be made by the Commissioner. With the extensive range of functions performed by the OAIC requiring Commissioner involvement, delegating the IC review function to senior officers, such as the Deputy and Assistant Commissioners would provide for flexibility to resolve matters in the most efficient and effective manner into the future. This would be similar to the position under the Queensland <i>Right to Information Act 2009</i>. The type of matters that could be made by a delegated decision maker could be specified in an instrument of delegation.</p> <ul style="list-style-type: none"> Noted that the OAIC suggested as part of the Hawke Review that more FOI complaint powers and the IC review power should be delegable. 			
<p>12/06/2018</p>	<p>Reform package proposed by OAIC</p> <p>Recommended legislative proposals for undertaking more efficient IC review and investigations.</p> <p><i>*Other items addressed in this package and set out in reform package section below.</i></p>			<ul style="list-style-type: none"> Hawke Review Rec 3 (charges only): Amend the FOI Act to provide for the delegation of the IC's powers in charges, practical refusals and searches decisions. <p>OAIC response: there is a clear need for the IC review function to be delegable to other senior officers, such as an Assistant Commissioner. This would offer a significant improvement to the effectiveness of the OAIC and would be similar to the position under the Queensland Right to Information Act 2009. The type of cases made by a delegated decision maker would be specified in any instrument of delegation. '... There is need for clarification about delegation of Commissioner powers and the interaction of ss 11 and 12. [Sections 11 and 12 of the Australian Information Commissioner Act 2010] - 'These provisions allows for the delegation of powers to staff that cannot be performed by the Privacy or FOI Commissioners without the approval of the Information Commissioner.</p>	<p>Meeting brief to then acting Information Commissioner ahead of meeting with the Attorney-General on 12/6/2018</p>	<p>D2023/018779</p>	

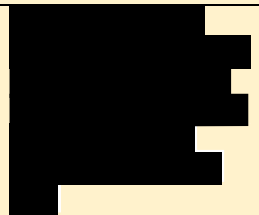

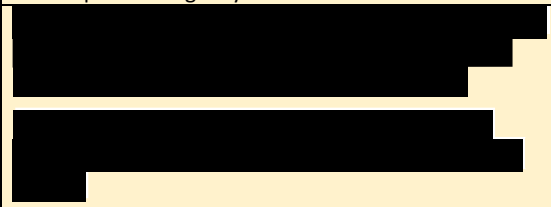
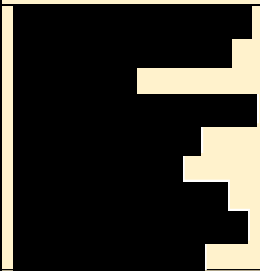
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				<ul style="list-style-type: none"> OAIC suggestion as part of Hawke Review: Amend the FOI Act to provide for the delegation of the IC’s powers in investigating and declining to investigate FOI complaints. <p>Further detail for meeting: At present functions and powers in relation to a decision not to investigate a complaint (s 73), notifying completion of an investigation (s 86) and implementation notices and reports to Ministers (ss 89, 89A) must be exercised by the IC or the other Commissioners. The Review considered that it was appropriate for these powers to be exercised by Commissioners noting that all other powers in relation to complaints are able to be, and have been, delegated to OAIC staff.</p> <p>In an environment with increasing reviews and complaints, and considering that the OAIC has had considerable experience in handling complaints in both FOI and privacy, amending the FOI Act to allow for the delegation of the IC’s powers in relation to the investigation of complaints would improve efficiency and timeliness.</p>			
Reform packages proposed by OAIC							
27/09/2022 to 23/02/23	<p>Law reform: minor amendments to the FOI Act (set out below)</p> <p>s47C</p> 	Yes: see below for section numbers	No	<p>OAIC’s proposed minor amendments to FOI Act: see below. Draft provided to Commissioner ahead of meeting with Secretary AGD.</p> <p>(*Not clear that all aspects may have been discussed at meeting.)</p>	<p>Meeting with Australian Information Commissioner, FOI Commissioner and Secretary AGD.23/02/2023.</p> <p>Previously, AGD asked whether</p>	<p>D2023/018579 - email ahead of meeting</p> <p>D2023/018578 - email from Deputy Commissioner Hampton including draft</p>	

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	<p>a) Minor amendment: Making an IC review application.</p>	<p>Yes: s 54N</p>		<p>Amendment to s 54N(4)(c) of the FOI Act to remove the reference 'to an electronic address' to allow the Information Commissioner to specify the electronic method to receive the IC review application.</p>	<p>there are any minor legislative amendments to the FOI Act that might assist the OAIC (referenced in an email from the Deputy Commissioner dated 27/09/2022).</p>	<p>email to AGD setting out minor amendments to the FOI Act.</p>	<p>No</p>
	<p>b) Minor amendment: Deemed access refusal decision</p>	<p>Yes: ss 15AC(3), 54D and 54Y.</p>		<p>Amendment to the FOI Act to clarify that an agency retains decision making power even if they are deemed by law to have refused the request.</p>			<p>No</p>
	<p>c) Minor amendment: Part payment of charges for FOI request</p>	<p>Yes: s 29</p>		<p>Amend s 29 of the FOI Act to provide that if the applicant does not pay the charge in full within 60 days of being notified of a decision under s 29(6) that the FOI request is deemed to have been withdrawn.</p>			<p>No</p>
	<p>d) Minor amendment: Resolution of IC review by agreement</p>	<p>Yes: Part VII</p>		<p>Amend the FOI Act to provide for the resolution of IC review applications by agreement without requiring a formal IC review decision (consistent with Recommendation 5 of the Hawke Review).</p>			<p>No</p>
	<p>e) FOI minor legislative amendment</p>	<p>Yes: Part VII Review by IC Division 3</p>		<p>Amend the FOI Act to provide that a valid IC review application cannot be made while an internal review process remains on foot (or until an internal review process is complete, if recommendation below is accepted).</p>			<p>No</p>
	<p>f) Concurrent internal and external review</p>						
	<p>g) Minor amendment: Mandatory internal review before IC review</p>	<p>Yes ss 54L(2)a) s 54M(2)(a)</p>		<p>Delete ss 54L(2)(a) and 54M(2)(a) of the FOI Act which provide that a valid application for IC review can be made directly without an internal review being undertaken.</p>			<p>No</p>
	<p>h) Minor amendment: Decline grounds for FOI investigations in the FOI Act</p>	<p>Yes: s 73</p>		<ul style="list-style-type: none"> Broaden s 73 of the FOI Act to include additional circumstances in which an FOI complaint can be finalised without conducting or continuing to undertake, an investigation – including where the complaint is more appropriately handled as an IC review 			<p>No</p>

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			<ul style="list-style-type: none"> Following notification of the complaint to the OAIC, the respondent agency has dealt, or is dealing with the complaint or has not yet had an adequate opportunity to deal with the complaint Powers should, where appropriate, also be consistent with powers under s 41 of the Privacy Act, including where investigation is not warranted and where the Information Commissioner is not able to provide the outcome that is being sought by the complainant. 			
	<p>i) Minor amendment: Decline grounds for FOI investigations</p>	Yes: s 73 (c)	<p>This amendment seeks to provide the Information Commissioner the power to decline to undertake or continue to undertake an investigation where the respondent agency: (a) has dealt, or is dealing, adequately with the complaint; or (ii) has not yet had an adequate opportunity to deal with the complaint without having the complainant made a complaint to the respondent agency first.</p>			No
	<p>§ 47 C</p> 					
	<p>k) Minor amendment Administrative Appeals Tribunal Regulation 2015</p>	No. Amendment to Part 6 of the <i>Administrative Appeals Tribunal Regulation 2015</i>	<p>Remove the application fee for applicants whose application for IC review has been declined under s 54W(b) of the FOI Act because the IC reviewable decision is a decision made by the OAIC. It is the view of the Information Commissioner that it is not appropriate for her to conduct an IC review, a process that is intended to provide first tier independent external review, of a decision made by his/her own agency.</p>			No

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01/11/2019 and 27/09/2019	OAIC identified room for improvement in the FOI framework and specified possible areas for review.	Yes: see below	Yes: see below	See below	Emails from OAIC to AGD EL2 attaching OAIC documents setting out areas for possible review/reform.	D2023/018782 email of 1/11/2019 D2023/018781 email of 27/09/2019.	
	a) Delegation by Information Commissioner	Interactions	Yes: s 25	Set out in delegations section above.			See delegations section above.
	b) s47C [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			No
	c) Kinds of other information to be published (IPS)	Yes: s 8	No	<ul style="list-style-type: none"> Agencies have requested clarity around s 8 which sets out publication of information requirements and in particular the s 8(4) discretion to publish 'other information'. Give the Information Commissioner power to issue a legislative instrument to specify classes/categories of additional information. 			No

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<p>d) Part payment of charges for FOI request (Access to documents – Charges)</p>	<p>s 29</p>	<p>No</p>	<ul style="list-style-type: none"> • There is currently no provision in the FOI Act allowing for finalisation of an FOI request if the applicant decides not to pay the balance of a charge after receiving a decision under s 29(6). As a result, the request could remain on hand indefinitely • Amend s 29 to provide that if the applicant does not pay the charge in full within 60 days of being notified of a decision under s 29(6) that the FOI request is deemed to have been withdrawn. 			<p>No</p>
<p>e) Resolution of IC review by agreement</p>	<p>Part VII</p>	<p>No</p>	<ul style="list-style-type: none"> • Amend the FOI Act to provide for the resolution of IC review applications by agreement without requiring a formal IC review decision (consistent with Hawke Review Recommendation 5). This would assist in more efficient finalisation of IC reviews and provide greater clarity regarding the finalisation of an FOI request/process. 			<p>No</p>
<p>f) Concurrent internal and external review (Review by Information Commissioner)</p>	<p>Part VII – Div 3</p>	<p>No</p>	<ul style="list-style-type: none"> • Amend the FOI Act to provide that the Commissioner must not consider an IC review application where a person has sought internal review. When applicants apply for both internal and external review after receiving the primary FOI decision, this results in confusion, double handling, and inefficiencies in undertaking both internal and IC reviews. 			<p>No</p>
<p>g) Hearings for IC reviews</p>	<p>s 55B</p>	<p>No</p>	<ul style="list-style-type: none"> • Amend s 55B of the FOI Act to reflect that hearings will only be held in unusual circumstances. Parts 10.63 to 10.66 of the FOI Guidelines provide that hearings are not intended to be a common part of IC reviews because they increase contestability, introduce more formality and prolong resolution of the review. 			<p>No</p>
<p>h) Evidence of Inspector-General of Intelligence and Security (IGIS) for s 33 exempt documents –</p>	<p>ss 33, 55ZA, 55ZB, 55ZC, 55ZD</p>	<p>No</p>	<ul style="list-style-type: none"> • Amend Division 9 of Part VII of the FOI Act so that evidence is only required to be sought from the IGIS when the documents under review are subject to s 33(1)(a) and (b) (security of the 			<p>Yes: s 55ZA. The National Security Legislation Amendment (Comprehensive Review</p>

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	(Review by Information Commissioner)			<p>Commonwealth and defence of the Commonwealth) of the FOI Act.</p> <ul style="list-style-type: none"> Provide the Information Commissioner with a discretion to request the IGIS to give evidence if the exempt documents are subject to ss 33(1)(c) and 33(b), and to consult IGIS as she sees fit. Section 33(1)(c) is the most commonly applied subsection of s 33. However, it has been the experience of the OAIC that the IGIS will advise, under s 55ZAC, that she is not appropriately qualified to give evidence on such matters. 			<p>and Other Measures No. 2) Bill 2023 received assent on 11/08/23.</p> <p>The Bill replaces s 55ZA of the FOI Act to narrow the circumstances in which the IGIS is required to appear before the Information Commissioner(see further details in Bill Scrutiny below).</p>
	i) Revising a refusal decision – Commissioner’s consent (Part VII Review by Information Commissioner)	s 55G	No	<ul style="list-style-type: none"> We request an amendment to s 55G that would require the agency or minister to make a revised decision in relation to a request or an application under s 48 during an IC review with the <i>consent of the Information Commissioner</i>. This amendment would make the conduct of IC reviews and the process of making decisions under s 55K more efficient. 			No
	j) Decline grounds for FOI investigations (Part VIIB Investigations and Complaints)	s 73	No	<ul style="list-style-type: none"> Broaden s 73 of the FOI Act to include additional circumstances in which an FOI complaint can be finalised without conducting or continuing to undertake, an investigation, including where: <ul style="list-style-type: none"> The complaint is more appropriately handled as an IC review Following notification of the complaint to the OAIC, the respondent agency has dealt, or is dealing with the complaint or has not yet had an adequate opportunity to deal with the complaint Powers should, where appropriate, also be consistent with powers under s 41 of the Privacy Act. 			No
	k) General areas for review identified in resource provided on 01/11/2019			<ul style="list-style-type: none"> Examining the language of the FOI Act, particularly in the context of the digital environment (including the use of word ‘information’ rather than ‘document’) 			No

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				<ul style="list-style-type: none"> Examining domestic and international access to information legislation to identify provisions which promote more timely and proactive publication of documents routinely requested, for example, Question Time Briefs, ministerial and senior official diaries etc Reviewing the recommendations made by the Hawke Review undertaken in 2013, including the recommendation to review agencies listed in Part 1 of Sch 2 of the FOI Act. 			
12/06/2018	Recommended legislative proposals for undertaking more efficient IC review and investigations.	Yes: provisions unspecified other than those interacting with AIC Act in delegations context (see delegations section above)	Yes: see delegations	<ul style="list-style-type: none"> Two items on delegation of the IC's powers: discussed above in delegations section in relation to Hawke Review Rec 3, and an OAIC suggestion in the Hawke Review. Hawke Review Rec 5: Amend the FOI Act to provide for the resolution of applications for agreement without requiring a formal IC decision <div data-bbox="987 735 1473 1090" style="background-color: black; color: red; padding: 5px;"> <p>s47C</p> <p>s47C s47C</p> </div>	Meeting brief to then acting Information Commissioner ahead of meeting with the Attorney-General on 12/6/2018	D2023/018779	See above on delegations No amendment to FOI Act to provide for resolution of applications by agreement

Appendix B: Requests for OAIC’s views on proposed amendments

Date consulted	Subject of consultation	FOI Act	AIC Act	Considerations and OAIC comments (if applicable)	Nature of consultation	TRIM links	Implemented for AIC/FOI Acts?
AGD proposals and reviews							
16/08/23	<p>Proposed new general secrecy offence s47C [REDACTED]</p>	No	s47C [REDACTED]	Nil FOI comments provided.	AGD emailed us one page outline for comment	D2023/019505 – email from AGD D2023/019508 – FOI branch consideration (nil comments)	No
30/06/23 to 10/07/23	s47C [REDACTED]	FOI Act interactions	AIC Act interactions	<ul style="list-style-type: none"> s47C [REDACTED] 	s47C [REDACTED]	D2023/019895 - AGD papers D2023/019897 – OAIC’s emailed response.	No
March 2022 - 04/05/2023	AGD review into non-disclosure duties and secrecy offences in Commonwealth legislation.	Yes: s 38	s47C [REDACTED]	s47C [REDACTED]	[REDACTED]	D2023/016688 Internal email to Assistant Commissioner Rocelle Ago ahead of meeting.	No (however s 29 of the Australian Information

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	<p>This review arose from recommendations made in the Parliamentary Joint Committee on Intelligence and Security (PJCS) report on its <i>Inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press</i> – in particular Recommendations 6 and 7 concerning Commonwealth secrecy provisions and public sector journalism.</p>		<p>s47C</p>	<p>s 4 7 C</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>		<p>D2022/005773 AGD Paper</p> <p>D2022/006548 Executive Brief to Commissioner</p> <p>D2022/005771 OAIC comments on consultation paper</p>	<p>Commissioner Act was amended by the Privacy Legislation Amendment Enforcement and Other Measures) Bill which passed 12 December 2022)</p>
<p>18/01/2023</p>	<p>s47C</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>[Redacted]</p>	<p>No</p>	<p>s47C</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>s47C</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>D2023/018581 Response from OAIC (via template)</p>	<p>s4 7C</p> <p>[Redacted]</p> <p>)</p>

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20/04/2021	Definition of records in Archives Act and FOI Act	Interactions (definition of 'record')	No	<p>The Deputy Commissioner Elizabeth Hampton:</p> <ul style="list-style-type: none"> raised with AGD potential inconsistencies between Archives Act requirements and FOI Act requirements. Consideration prompted by Tune Review which raised potential difficulties with the definition of 'record' under Archives legislation. s47C [REDACTED] 	Internal OAIC email correspondence 20/4/2021 and 8/5/21. Discussions with AGD on 20/4/2021 (informal) and 7/5/2021.	D2023/018790	No
Bill scrutinies							
15/08/2023	National Security Legislation Amendment (Comprehensive Review and Other Measures No. 3) Bill 2023	Yes: Schedule 3	No	<p>The Bill amends the <i>Australian Security Intelligence Organisation Act 1979</i> (ASIO Act) amongst others. In particular, the Bill proposes to repeal and replace s 92 of the ASIO Act and insert new s 92A.</p> <p>Given Sch 3 of the FOI Act lists subsections 92(1) and 92(1A) as secrecy provisions (pursuant to s 38) the Bill proposes consequential amendments to the FOI Act. In particular, the Bill proposes to remove s 92(1A) and substitute 92A(1) in Schedule 3. The effect of the Bill would mean that the Sch 3 of the FOI Act would refer to a new s 92(1), even if the FOI Act does not require specific amendment in this regard.</p>	Email	D2023/019380 Nil FOI Comments D2023/005882	No
05/06/2023 & 28/06/2023	Parliamentary Workplace Support Service (consequential Amendments & Transitional provisions) Bill 2023	Yes ss 7 and Schedule 2 (Div 1 of Part 1)	No	<p>We understood that the draft Bill concerns the Parliamentary Workforce Support Service (PWSS) and amends the Freedom of Information Act 1982 (FOI Act) as follows:</p> <ol style="list-style-type: none"> specifies the PWSS in Schedule 2 (Division 1 of Part I) as an exempt agency for the purposes of the FOI Act. inserts proposed subsection 7(2DC) to exempt the Minister and agency from the operation of the FOI Act in relation to: 	Email	D2023/019452 Additional response D2023/019462 Email response to AGD	No

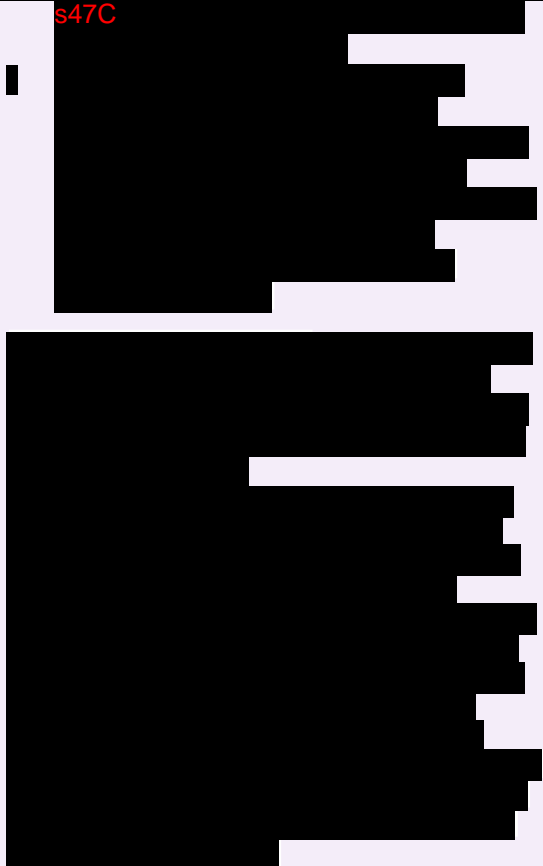
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				<ul style="list-style-type: none">• a document given to, or received by, the PWSS in connection with the performance of PWSS functions;• a document brought into existence by the PWSS. <p>3. Inserts subsection 7(2DE) which specifies that the above proposed exception does not apply to documents created other than in connection with the performance of PWSS functions (the drafting notes indicate this is to prevent a Minister or Agency giving a document to the PWSS in order to circumvent disclosure that would be otherwise required under the FOI Act).</p> <p>s47C s47C</p> <p>s47C</p>			
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Inquiry into the operation of Commonwealth Freedom of Information (FOI) Laws

26/05/2020	National Commissioner for Defence & Veteran Suicide Prevention Bill 2020 and associated consequential amendments Bill	Yes ss 7, Schedule 2 (Div 1 Pt 1)	No	s47C [Redacted]	Email	D2020/010844 Response to AGD (FOI Comments)	Partially – included s7(E) (vi) (b) that contains info to which s 60Q of that Act which deals with certain info given to the Defence and Veteran Suicide Royal commission (applies; (b) a document that contains a summary of or an extract or information from a private session.
14/03/23 - 20/03/2023	National Security Legislation Amendment (Comprehensive Review and Other Measures No. 3) Bill 2023	Yes: ss 7, 55ZA	No	s47C [Redacted]	Telephone consultation following AGD email	D2023/019993 internal OAIC summary of proposed amendments	Yes – Bill received assent on 11 August 2023.
26/05/2023	s47C [Redacted]	s47C [Redacted]	No	s47C [Redacted]	Email	s47C [Redacted]	No

Inquiry into the operation of Commonwealth Freedom of Information (FOI) Laws

				<p>s47C</p> 			
11/01/2023	Royal Commissions Amendment (Enhancing Engagement) Bill 2022	Yes: s 7	No	<p>Proposed amendments to the Bill will:</p> <ul style="list-style-type: none">increase the scope of information protected by the Royal Commissions Act 1902 (Royal Commissions Act) to include information obtained outside of private sessions, and to further protect information provided to the Commission beyond the duration of the Commission through the 99 year open access period for the purposes of the Archives Act 1983; and	Email	D2023/000548 - FOI Response	Bill received assented 11/04/2023 and amended s 7 (inserted 7 (2E)(a)(vi))

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- amend the Freedom of Information Act 1982 (FOI Act) to insert a new s 7(2E)(a)(vi) which will exclude information covered by s 60Q of the Royal Commissions Act from disclosure under the FOI Act.

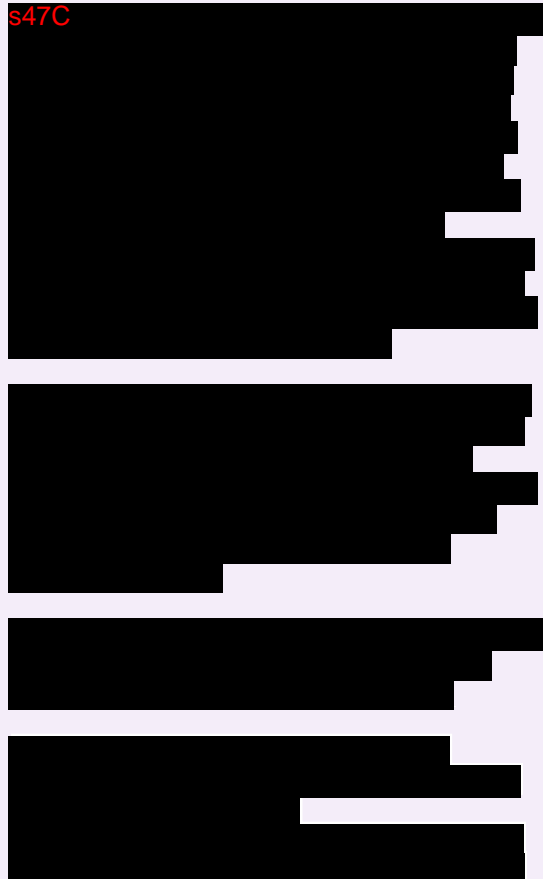
The effect of the proposed amendment is that individuals will not be able to access their own personal information under the FOI Act or apply for such records to be amended under s 48 [Amendment and annotation] of the FOI Act, if it is information to which s 60Q applies. Similarly under the Royal Commissions Act, although clause 60Q(3) permits an individual to access the information they have provided, this does not extend to individuals who have information given on their behalf.

s47C [Redacted]




[Redacted]

[Redacted]

Inquiry into the operation of Commonwealth Freedom of Information (FOI) Laws

<p>13/12/2019 V22 17/12/2019 (UFOI1) 06/01/2020 V31 17/01/2020 (s 121) 07/02/2022 28/01/2022</p>	<p>Data Availability & Transparency Bill 2020 & 2019</p>	<p>Yes s 16 s 11</p>	<p>No</p>	<p>Multiple suggested amendments and consultations</p> <p>Section 121 (1) DAT Bill Changes made to cl 121(1) of draft Bill, now provides that individuals do not have a right of access under the FOI Act to obtain documents shared by a data custodian with or through an accredited entity, from the accredited entity.</p> <p>s47C</p> 	<p>Email</p>	<p>D2023/019317 D2023/019319 D2023/019320 D2023/019321 D2022/001718 FOI Response (Draft) D2023/019311</p>	<p>Data Availability and Transparency (Consequential Amendments) Bill was passed in 2022 with amendments to s 7. Inserted s 7(2F) exemption.</p>
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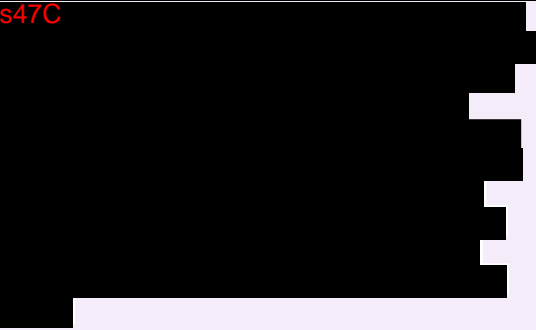
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				<p>s47C</p>   			
22/02/2021	<p>Commonwealth Integrity Commission (CIC) Bill Draft Legislation 2020</p> <p>Integrity and Anti-Corruption Legislation Amendment (CIC Establishment and Other Measures) Bill 2020 (CIC Establishment and Other Measures Bill).</p>	<p>Yes</p> <p>Division 1 Schedule 2</p>	No	<p>Draft legislation comprises two Bills, CIC Bill and the Integrity and Anti-Corruption Legislation Amendment (CIC Establishment and Other Measures) Bill 2020 (CIC Establishment and Other Measures Bill). Further, cl 90 of the CIC Establishment and Other Measures Bill proposes to insert the 'Commonwealth Integrity Commission' into Division 1 of Part 1 of Schedule 2 of the FOI Act, which would have the effect of excluding the CIC entirely from the operation of the FOI Act.</p>	<p>OAIC completed written response (via AGD-provided template).</p>	<p>D2023/019382 OAIC Submission</p>	No

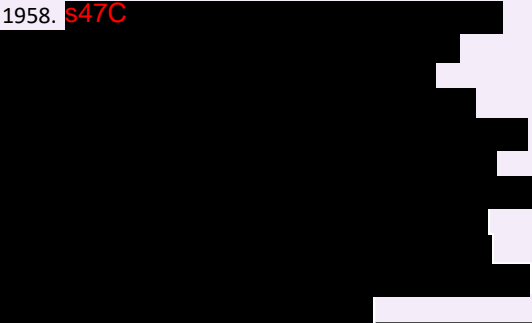
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				Accordingly, the Bill will exempt the CIC, and any documents produced by a Minister or agency for the purposes described above, from the operation of the FOI Act.			
27/11/2020 & 11/02/2021	Draft Online Safety Bill 2020	Yes Schedule 2 s 4(1) s 37	No	MA15+ is no longer included as class 23 material s47C [Redacted]	Email Submission to Communications Legislation Committee	D2021/002399 OAIC response email to AGD D2021/002942 – OAIC submission to Committee D2021/000182 – Further comment to AGD	Amendments made by the Online Safety (Transitional Provisions and Consequential Amendments) Act 2021: s 4 , Sch 2
27/05/2020	Territories Legislation Amendment Bill 2020	Yes s 4(1)	No	Inserts a definition of Norfolk Island law into s 4(1) of the FOI Act.	Email	D2023/019338 – OAIC Response to AG	Yes - amendments to s 4
26/05/2020	National Commissioner for Defence & Veteran Suicide Prevention Bill 2020 (consequential amendments Bill)	Yes s 7	No	s47C [Redacted]	Email	D2023/019326	Partially – included s7(E) (vi) (b) that contains info to which s 60Q of that Act which deals with certain info given to the Defence and Veteran Suicide Royal commission (applies; (b) a

Inquiry into the operation of Commonwealth Freedom of Information (FOI) Laws

				s47C 			document that contains a summary of or an extract or information from a private session.
13/03/2020	Social Services and Other Legislation Amendment (Omnibus) Bill 2020	Yes s 4(1)		To give effect to Government’s decision to convert the former Department of Human Services into an Executive Agency called Services Australia. a small amendment under Schedule 1 that will affect the FOI Act: Subsection 4(1) (definition of Human Services Department) Omit “the Department administered by the Human Services Minister”, substitute “Services Australia”. 19 Subsection 4(1) (definition of Human Services Minister) Repeal the definition. The provisions affecting the FOI Act again appear to give effect to agency conversion, by substituting DHS for Services Australia, and repealing the definition of Human Services Minister. Changes not likely to adversely impact operations of the FOI Act	Email	D2023/019322	Yes - Definitions in s 4 amended by Services Australia Governance Amendment Act 2020
13/09/2019	Australian Sports Anti-Doping Authority Amendment (Sport Integrity Australia) Bill 2019	Yes s 38 and Schedule 3 of FOI Act	No	Identify documents exempt from disclosure under the FOI Act because there are secrecy provisions in an Act. Section 67 of the ASADA Act is a secrecy provision providing protected information may only be disclosed under certain conditions. No provisions of the ASADA Act are currently listed in Schedule 3 of the FOI Act. At item 13 of Schedule 2, the Bill proposes to add Sport Integrity Australia Act 2019, section 67’ to Schedule 3 of the FOI Act. This would have the effect of protected information under the Sport Integrity Australia Act being treated as an ‘exempt document’ under the FOI Act regime.	Email	D2023/019294	Bill received assent 6 March 2020. Amended Schedule 3.

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<p>21/08/2019 25/10/2019 04/11/2019 03/12/2020</p>	<p>Migration and Citizenship Legislation Amendment (Strengthening Information Provisions) Bill 2020</p> <p>Migration and Citizenship Legislation Amendment (Strengthening Information Provisions) Bill 2019</p>	<p>Yes s 38 Schedule 3</p> <p>Suggests repealing 38(3)(b) 503A of the Migration Act</p>	<p>No</p>	<p>The Bill proposes to insert a new provision into section 38(3)(b) of the FOI Act. The proposed amendment proposes if a person seeks access under the FOI Act to confidential information communicated by a law enforcement or intelligence agency to a Commonwealth officer for the purpose of refusing, cancelling, renouncing or revoking their Australian citizenship, the secrecy provision in section 38 of the FOI Act applies to exempt that document from disclosure, even if the information sought is personal information only about the person seeking access (to which section 38(2) would usually apply to allow the person to access their own personal information, despite it being subject to a secrecy provision). The proposed amendment to the FOI Act mirrors the language of the existing section 38(3)(b) of the FOI Act as it applies to confidential information communicated by a law enforcement or intelligence agency to a Commonwealth officer for the purpose of cancelling a person's visa under section 501 of the Migration Act 1958. s47C</p> 	<p>Email</p>	<p>D2019/012566 – email to Home Affairs</p> <p>D2019/012567 – Request</p> <p>D2020/022687 – Response to AGD</p>	<p>No - 2019 and 2020 Bills second reading moved though lapsed at dissolution 11/04/2022</p>
<p>12/07/2019</p>	<p>Royal Commissions Amendment (Private Sessions) Bill 2019</p>	<p>Yes s 7(2E)(a)</p>	<p>No</p>	<p>Introduce a proposed s 60N seeking to protect information given by a natural person to the Child Sexual Abuse Royal Commission other than for the purposes of a private session, and:</p> <ul style="list-style-type: none"> contains an account of the person's experience of child sexual abuse in an institutional context, or 	<p>Email</p>	<p>D2019/008092 - FOI Response</p>	<p>2019 Bill - Yes – Commenced 13/09/2019 Amended s 7: repealed and replaced Sch 2: s 7(2E)(a), added 7(5).</p>

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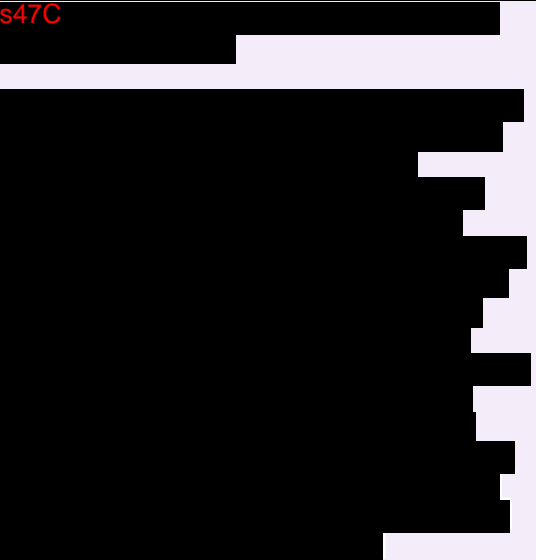
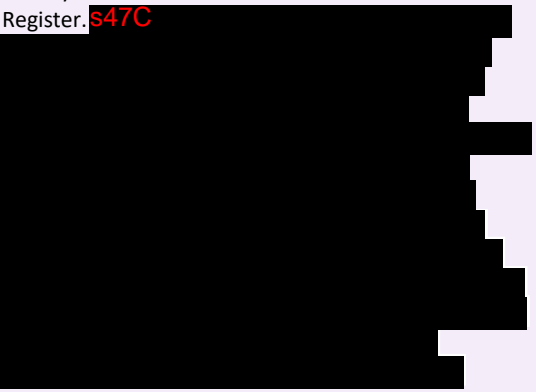
- contains an account of what happened to other people regarding child sexual abuse, and
- the information identifies the information-giver and was treated as confidential by the Commission.

s47C
[Redacted]

The amended Bill introduces a new s 6ON into the Royal Commissions Act 1902 and extends the operation of s 7(2E)(a) of the FOI Act to include the information identified in s 6ON of the Royal Commissions Act (by adding s 7(2E)(a)(iv)). This has the effect of excluding from the scope of the FOI Act, not only information relating to private sessions of the Child Sexual Abuse Royal Commission (as the initial Bill did), but also information given by a person other than in a private session that contains an account of abuse from which the person is identifiable, and which was treated confidentially by the SARC.

s47C
[Redacted]

Inquiry into the operation of Commonwealth Freedom of Information (FOI) Laws

				<p>s47C</p> 			
09/08/2019	Interactive Gambling Amendment (National Self Exclusion Register) Bill 2019	Yes	No	<p>Introduced with the National Self-exclusion Register (Cost Recovery Levy) Bill 2019, amending the Australian Communications and Media Authority (ACMA) Act 2005, Interactive Gambling Act 2001 and Privacy Act 1988 to establish a National Self-exclusion Register. s47C</p> 	Email	<p>D2023/019378 – FOI response</p> <p>D2019/008827 – Internal email</p> <p>D2023/019348 - Request from AGD</p>	No

Inquiry into the operation of Commonwealth Freedom of Information (FOI) Laws

				s47C [REDACTED]			
03/10/2018	Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2018	Yes s 34 (1AA)	No	Proposed amendment to s 34(1A) if material released or shared by the IGIS – regarding obligation when evidence of breach of duty or misconduct	Email	D2023/019322 - No comments by OAIC – no concerns on proposed changes	No
12/07/2018	Commonwealth Registers Bill 2018	Yes s 3 s 12(1)(b))	No	s47C [REDACTED]	Email	D2023/019375 - Response to AGD	No

Proposed legislative amendments as at August 2023

Proposed amendments to the *Freedom of Information Act 1982* (FOI Act) and *Australian Information Commissioner Act 2010* (AIC Act) are set out in **Appendix A**. The proposed amendments that have previously been raised with the Attorney-General's Department (including through the *Hawke Review*) are highlighted in yellow. For further information, see **Commissioner Brief 18 – Proposed amendments to the Freedom of Information Act 1982 from 2018**.

Features for consideration in state, territory and New Zealand information access laws are also set out in **Appendix B**. For further information, see **Commissioner Brief 16 – Information access laws across Australian states and territories**.

The proposed amendments to the FOI Act seek to:

- strengthen the remit of the Information Publication Scheme by providing the Information Commissioner the power to issue a legislative instrument to specify classes/categories of additional information that must be published on an agency's Information Publication Scheme (Recommendation 1)
- mandate the establishment of administrative access schemes for personal information/personnel records and the use of such schemes as a pre-condition to exercising the right of access under s 15 of the FOI Act (Recommendation 2)
- clarify the status of requests for documents following a change in minister and process for IC reviews where there has been a change in minister (Recommendation 3)
- remove or otherwise amend paragraph 11(3)(c) to remove ambiguity around the requirement to have released documents available for direct download (Recommendation 4)
- limit the OAI's role in relation to extending processing timeframes (Recommendation 5)
- clarify for agencies and ministers that they retain decision maker powers even if they are deemed to have refused a request (Recommendation 6)
- remove duplication through providing that a valid IC review cannot be made while an internal review process remains on foot or until an internal review process is complete (Recommendation 8)
- assist in the effective triage and resolution of IC review applications, including through:
 - providing the Information Commissioner the power to issue directions to prescribe the method of application and the power to remit a matter back to the decision maker (Recommendations 9 and 12)
 - clarifying that hearings for IC reviews are only held in unusual circumstances (Recommendation 10)
 - require the Information Commissioner's consent for a revised decision by the agency/minister during an IC review (Recommendation 11)
 - providing the power for parties to resolve a matter without an IC decision (Recommendation 13)
- assist in the effective management of FOI complaints, including through:
 - requiring the complainant to specify the action taken by an agency in the performance of functions, or the exercise of powers under the FOI Act (Recommendation 14)
 - providing the Information Commissioner the discretion to investigate a complaint and to further broaden the circumstances in which an FOI complaint can be finalised without conducting or continuing to undertake an investigation (Recommendations 15 and 16) and
 - requiring the complainant to lodge a complaint with the agency or minister first (Recommendation 17)
- amend the *Australian Information Commissioner Act 2010* to:
 - introduce an audit or assessment power as an FOI function in s 8(1)(g) (Recommendation 18)
 - introduce a power to develop professional standards (Recommendation 19)
 - broaden the categories of information at s 31 that are required to be reported to the OAI (Recommendation 20).

Version:1.0	Cleared by: Rocelle Ago	Action officer: Rocelle Ago
Current at: 23/08/23	Phone number: 02 9942 4205	Action officer number: 02 9942 4205

FOI Act Amendments				
Recommendation	Category	Context	Provision	Amendment requested
1.	Kinds of other information to be published (Part II Information Publication Scheme)	Section 8 sets out publication of information requirements and includes a discretion in s 8(4) to publish 'other information'. Agencies have asked for greater clarity about what might constitute 'other information' for the purpose of s 8(4) of the FOI Act.	s 8(7) (new)	We request an amendment that gives the Information Commissioner the power to issue a legislative instrument to specify classes/categories of additional information. This amendment would allow the Information Commissioner to further promote the objects of the FOI Act. Give the Information Commissioner power to issue a legislative instrument to specify classes/categories of additional information.
2.	Request for personnel records / personal information	Section 15A sets out the process for seeking access to personnel records held by an agency.	s 15A	We request that s 15A be amended to <ul style="list-style-type: none"> require agencies to establish an administrative access process and for applicants to utilise that process prior to making a request under s 15. This will assist ensuring that agencies have an administrative access process to release information in a more timely way and would further promote the objects of the FOI Act. Extend the provision (or create a new provision) to capture requests for an individual's own personal information held by an agency and to mandate the creation of an administrative access process. This will significantly reduce the number of FOI requests relating to personal information and will allow for more timely provision of documents, further promoting the objects of the FOI Act. This may also assist in addressing the requests made by individuals seeking their information through the FOI process for the purpose of an active or upcoming matter in the AAT.
3.	Definition of 'official document of a minister'	The impact of a change of minister on an FOI request, including where the new minister is required to make a decision on the request, and an IC review, including whether the OAIIC would have the power to make a decision and release a document within its possession, requires clarification.	s 4; Part VII Review by Information Commissioner	We seek an amendment to clarify the status of requests for documents following a change in minister and process for IC reviews where there has been a change in minister.
4.	Disclosure log – making documents available for direct download	The Information Commissioner is of the view that consistent with better practice, agencies and ministers should seek to make all documents released in response to FOI requests available for download from the disclosure log or another website (s 11C(3)(a) or (b)) subject to	s 11C(3)	We seek to remove or otherwise amend paragraph 11(3)(c) to remove ambiguity around the requirement to have released documents available for direct download.

FOI Act Amendments				
		applicable exceptions, unless it is not possible to upload documents due to a technical impediment, such as file size, the requirement for specialist software to view the information, or for any other reason of this nature. This approach is consistent with the objects of the FOI Act.		
5.	Extensions of time (EOT)	<p>A number of FOI Act provisions provide for extension of time, including: by agreement with the applicant (s 15AA); if the request is complex or voluminous, by application to the IC (s 15AB); and after the processing period has run out to allow the request to be finalised, by application to the IC (s 15AC). The agency is also required to notify the OAIC if an applicant agrees to an extension of time. The Hawke Review noted that existing EOT provisions, together with the deemed refusal provisions for decisions not made within time (ss 15AC(3)), are complex and confusing – particularly in relation to whether an agency can continue to process a request without an extension from the OAIC. Revising these procedures may enhance their operation and reduce the burden on agencies including on the OAIC. Recommendation 7 of the Hawke review recommends that the FOI Act be amended to:</p> <ul style="list-style-type: none"> • <i>remove the requirement to notify the OAIC of extensions of time by agreement; and</i> • <i>restrict the OAIC's role in approving extensions of time to situations where an FOI applicant has sought an Information Commissioner review or made a complaint about delay in processing a request.</i> <p>A couple of submissions to this current FOI Inquiry were in line with this principle (Home Affairs suggested removing the requirement for an agency to notify the OAIC of an applicant's agreement to a s 15AA EOT and another stakeholder (consultant) stated that OAIC's EOT role under s15AA and s 15AB appears to waste considerable resources).</p> <p>To maintain an oversight role for the OAIC concerning EOTs, alternative approaches could be considered – for example, a requirement on agencies to notify the OAIC where processing delays are over a certain threshold (this</p>	Part III in particular s 15AA, s 15AB, s 15AC	<p>We request amendments to Part III to:</p> <ul style="list-style-type: none"> • remove the requirement to notify the OAIC of extensions of time by agreement; and • restrict the OAIC's role in approving extensions of time to situations where an FOI applicant has sought an Information Commissioner review or made a complaint about delay in processing a request.

FOI Act Amendments				
		potential approach reflects submissions by Home Affairs and the Public Interest Advocacy Centre).		
6.	Deemed access refusal decision	<p>Section 15AC(3) provides that if a decision is not made within the statutory timeframe the request is deemed to have been refused by the principal officer of the agency or the minister. A similar provision applies to with respect to internal review by agencies (s 54D).</p> <p>On one interpretation an agency or minister has no legal power to make a decision on an FOI request if the decision is deemed to have been refused under s 15AC(3), unless an extension of time has been granted under s 15AC(5) or the applicant has made an IC review application and s 55G applies. A similar position applies with respect to agencies on internal review under s 54D. This would have the consequence that an applicant's right of access under the FOI Act would be impeded through delay on an agency's part and could only be revived by an application for IC review. This result would be contrary to the objectives and requirements of the FOI Act.</p>	ss 15AC(3), 54D and 54Y	<p>We see an amendment to clarify that an agency retains decision making power even if they are deemed by law to have refused the request.</p> <p>See for example: Section 39(3) of the <i>Freedom of Information Act 2016</i> (ACT): 'The respondent may continue to deal with the application and give notice of a decision on the application'.</p>
7.	Part payment of charges for FOI request (Part III Access to documents – Charges)	There is currently no provision in the FOI Act allowing for finalisation of an FOI request if the applicant decides not to pay the balance of a charge after receiving a decision under s 29(6). As a result, the request could remain on hand indefinitely.	s 29	We seek an amendment to s 29 to provide that if the applicant does not pay the charge in full within 60 days of being notified of a decision under s 29(6) that the FOI request is deemed to have been withdrawn.
8.	Concurrent internal and external review (Part VII Review by Information Commissioner – Division 3)	<p>Applicants on occasion have applied for both internal and external review after receiving the primary FOI decision. This results in confusion, double handling, and inefficiencies in undertaking both internal and IC reviews.</p> <p>We request an amendment that streamlines the review process and makes it clear that while an applicant has the choice of seeking internal review or IC review, the applicant cannot seek IC review where an internal review process is on hand.</p>	Part VII – Div 3	We seek an amendment to the FOI Act to provide that a valid IC review cannot be made while an internal review process remains on foot or until an internal review process is complete.
9.	Making an IC review application	To assist in the more efficient triage and early resolution of matters, we encourage applicants to lodge their applications through an online form which is integrated into the OAIC's case management database. We request an amendment that would encourage the use of the online	Section 54N sets out the requirements for making an IC review application. In particular, s 54N(4) prescribes the method in	We seek an amendment to s 54N(4)(c) to remove the reference 'to an electronic address' and to include the power for the Information Commissioner to specify the electronic method to receive the IC review application.

FOI Act Amendments

		form. This could be achieved through amending s 54N(4)(c) by removing 'to an electronic address'.	which the IC review application may be delivered to the Oaic: (a) delivery to the Information Commissioner at the address of the Information Commissioner specified in a current telephone directory; (b) postage by pre-paid post to an address mentioned in paragraph (a); (c) sending by electronic communication to an electronic address specified by the Information Commissioner.	
10.	Hearings for IC reviews (Part VII Review by Information Commissioner)	Section 55B is framed in a way that supports a view that hearings are a usual feature of IC reviews. Parts 10.63 to 10.66 of the FOI Guidelines provide that hearings are not intended to be a common part of IC reviews because they increase contestability, introduce more formality and prolong resolution of the review. Notably, hearings are also not a feature of the external review process conducted by the Office of the Victorian Information Commissioner and the Office of the Information Commissioner (Qld).	s 55B	We seek an amendment to s 55B of the FOI Act to reflect that hearings will only be held in unusual circumstances.
11.	Revising a refusal decision – Commissioner’s consent (Part VII Review by Information Commissioner)	Section 55G allows an agency or Minister to vary or set aside and substitute an access refusal decision in relation to a request or an application under s 48 at any time during an IC review if the variation or substitution (the revised decision) would have an effect of: giving access to a document in accordance with the request; relieving the IC review applicant from liability to pay a charge; or requiring a record of personal information to be amended or annotated in accordance with the application.	s 55G	We seek an amendment to s 55G of the FOI Act to require consent by the Information Commissioner for a revised decision by the agency or minister.

FOI Act Amendments

		<p>There have been various instances where an IC review was progressing to a decision under s 55K and the OAIC was advised that a revised decision has been made and provided directly to the applicant. At times, a revised decision has: relied on further exemptions to refuse access to certain material (thereby adding other exemptions that need to be considered); or not resolved the issues on review.</p> <p>We request an amendment that would require the agency or minister to make a revised decision with the consent of the Information Commissioner. This amendment would assist in making the conduct of IC reviews and the process of making decisions under s 55K more efficient.</p>		
12.	Power to remit matter to decision maker for further consideration (Part VII Review by Information Commissioner)	<p>See Hawke Review recommendation 4: The Review recommends the FOI Act be amended to provide an express power for the Information Commissioner to remit a matter for further consideration by the original decision-maker.</p>	New provision	We seek an amendment to the FOI Act that would provide the power to remit an IC review for further consideration by the original decision-maker.
13.	Resolution of IC review by agreement (Part VII Review by Information Commissioner)	<p>The Hawke Review recommended:</p> <p><i>Recommendation 5 – Resolution of Applications by Agreement</i></p> <p><i>The Review recommends the FOI Act be amended to make it clear that an agreed outcome finalises an Information Commissioner review and, in these circumstances, a written decision of the Information Commissioner is not required.</i></p> <p>This amendment would assist in more efficient finalisation of IC reviews and provide greater clarity regarding the finalisation of an FOI request/process.</p>	Part VII	We seek an amendment to the FOI Act to provide for the resolution of IC review applications by agreement without requiring a formal IC review decision. See recommendation 5 of the Hawke Review.

FOI Act Amendments				
14.	Information Commissioner investigations—making complaints (Part VIIB of the FOI Act)	<p>Section 70(2) provides that a complaint must (a) be in writing; and (b) identify the agency (also the respondent agency) in respect of which the complaint is made.</p> <p>The provision does not require the complainant to specify the action taken by an agency in the performance of functions, or the exercise of powers under the FOI Act.</p> <p>We request an amendment that requires the complainant to specify the action taken by an agency in the performance of functions, or the exercise of powers under the FOI Act.</p>	s 70	We seek an amendment to s 70 to provide that the complainant specify the action taken by an agency in the performance of functions, or the exercise of powers under the FOI Act.
15.	Information Commissioner investigations—power to investigate (Part VIIB of the FOI Act)	<p>Section 69(1) requires that ‘the Information Commissioner must, subject to this Division, investigate a complaint made under section 70’.</p> <p>The provision appears to anticipate that every complaint will be investigated.</p> <p>We request an amendment that provides the Information Commissioner the discretion to investigate a complaint.</p>	s 69	We seek an amendment to s 69 to provide that the Information Commissioner may, subject to this Division, investigate a complaint made under section 70.
16.	Decline grounds for FOI investigations (Part VIIB Investigations and Complaints)	<p>This amendment seeks to provide greater clarity as to the grounds to decline to undertake or continue to undertake an investigation, including where:</p> <ul style="list-style-type: none"> - The complaint is more appropriately handled as an IC review - Following notification of the complaint to the OAIC, the respondent agency has dealt, or is dealing with the complaint or has not yet had an adequate opportunity to deal with the complaint <p>Powers should, where appropriate, also be consistent with powers under s 41 of the <i>Privacy Act</i>, including where investigation is not warranted and where the Information Commissioner is not able to provide the outcome that is being sought by the complainant.</p>	s 73	We seek an amendment to broaden s 73 of the FOI Act to include additional circumstances in which an FOI complaint can be finalised without conducting or continuing to undertake, an investigation.
17.	Decline grounds for FOI investigations (Part	This amendment seeks to provide the Information Commissioner the power to decline to undertake or continue to undertake an investigation where the the	s 73(c)	We seek an amendment to remove the requirement for the complainant to complain to the respondent agency first

FOI Act Amendments				
	VIIB Investigations and Complaints)	respondent agency: (i) has dealt, or is dealing, adequately with the complaint; or (ii) has not yet had an adequate opportunity to deal with the complaint without having the complainant made a complaint to the respondent agency first.		
AIC Act Amendments				
18.	AIC Act - Broaden freedom of information functions – issue professional standards	Section 8(1)(g) of the Australian Information Commissioner Act 2010 sets out that FOI functions include ‘monitoring, investigating and reporting on compliance by agencies’ with the FOI Act. We consider an audit or assessment power would also be useful to foster and ensure compliance with FOI requirements, for example, where systemic issues are identified in relation to particular a particular agency or agencies.	s 8(1)(g) of the <i>Australian Information Commissioner Act 2010</i>	We request an amendment to s 8(1)(g) of the Australian Information Commissioner Act to set out that ‘auditing’ or ‘assessing’ is an FOI function.
19.	AIC Act – Broaden freedom of information functions – issue professional standards	This amendment seeks to provide the Information Commissioner the power to develop Standards relating to the conduct of an agency in performing its functions under the Act, and the administration and operation of the Act by an agency. See s 6U of the Freedom of Information Act 1982 (VIC)	s 8 of the <i>Australian Information Commissioner Act 2010</i>	We request the inclusion of a new freedom of information function to issue professional standards.
20.	AIC Act - Broadening the categories of information required to be reported to the OAIC	The OAIC (and before that the Attorney-General’s Department) collects general financial information that directly relates to FOI and Information Publication Scheme (IPS) work, however the requirement to do so is not mandated in the AIC Act. As a result, some agencies are unwilling to provide this information and this results in inaccurate information being published about the cost to the Australian Government in relation to the FOI Act.	s 31 of the <i>Australian Information Commissioner Act 2010</i>	Amend s 31 to broaden the categories of information required to be reported to the OAIC to support collection of information relating to non-staff costs directly attributable to FOI or IPS work (for example, general administrative costs, general legal advice costs, litigation costs, training costs and any other expenditure directly tied to FOI or IPS work, or give the Information Commissioner power to issue a legislative instrument to specify classes/categories of information to be reported.

Appendix B

(Please note the same content is in Com brief 16 – Information Laws Across States and Territories)

Features for consideration in state, territory and New Zealand information access laws

Category	Feature	Jurisdiction	Benefit
Definition of personal information	Definition of personal information for an individual who is or has been an officer of an agency or staff member of a Minister, does not include information about (i) the individual's position or functions as an officer or staff member, or (ii) things done by the individual in exercising functions as an officer or staff member (<i>Freedom of Information Act 2016</i> (ACT) Dictionary)	ACT	Reduce the length of time to process/decide/edit documents Reduce the complexity/number of issues raised in IC review
	Definition of personal information excludes information about an individual (comprising the individual's name and non-personal contact details, including position title, public functions and the agency in which the individual works) that reveals nothing more than the fact that the person was engaged in the exercise of public functions: <i>Government Information (Public Access) Act 2009</i> (GIPA Act) s 4(3)).	NSW	Reflect core principles we seek to enforce in the FOI Guidelines Improve trust and confidence in the system.
Discussion on public interest test	Public interest (<i>Freedom of Information Act 2016</i> (ACT) s 16); decision making steps (s 16(1); factors not to be taken into account, including whether access to the information could inhibit frankness in the provision of advice from the public service (s 16(2); applicant's identity, circumstances and reason for seeking access may be taken into account if the information requested is personal information and the personal information is not about the applicant (s 16(3))	ACT	Reduce the length of time to process/decide/edit documents Reduce the complexity/number of issues raised in IC review Reflect core principles we seek to enforce in the FOI Guidelines
	Factors to be considered when deciding the public interest test (<i>Freedom of Information Act 2016</i> (ACT) Schedule 2)	ACT	
Publication	Agencies and ministers must make open access information publicly available unless it is contrary to the public interest information. In those circumstances, a description of the information must be published unless there is a legislatively-specified reason not to publish – and the Ombudsman must be told about the decision and reasons. (<i>Freedom of Information Act 2016</i> (ACT) ss 23–24; incoming briefs, question time briefs, Minister's disclosure log and diary)	ACT	Reduce the number of requests received by agencies and ministers Reduce the length of time to process/decide/edit documents

Category	Feature	Jurisdiction	Benefit
	Open access requirements for minister (GIPA Regulation cl 6 and 9).	NSW	Reduce the complexity/number of issues raised in IC review,
	Cabinet papers and minutes must be proactively released within 30 business days of final decisions being taken by Cabinet, unless there is good reason not to publish all or part of the material, or to delay the release (Cabinet Office circular - CO (23) 4: Proactive Release of Cabinet Material: Updated Requirements).	New Zealand	Reflect core principles we seek to enforce in the FOI Guidelines Further the objects of the Act through mandating specific classes of documents to be published
Administrative access	An agency is authorised to release government information held by the agency to a person in response to an informal request by the person (Freedom of Information Act 2016 (ACT) s 8).	ACT	Reduce the number of requests received by agencies and ministers
Oversight	Oversight by a Parliamentary Committee.	ACT: ACT Legislative Assembly; ACAT (for Ombudsman review decisions). QLD: Legal Affairs and Community Safety Committee (Right to Information Act 2009 (QLD) s 189). NSW: Joint Parliamentary Committee (s44 Government Information (Information Commissioner) Act 2009 (NSW)).	Improve trust and confidence in the regulator Improve trust and confidence in the system.

Category	Feature	Jurisdiction	Benefit
		SA: Crime and Public Integrity Policy Committee	
		TAS: Joint Standing Committee on Integrity	
		VIC: Accountability & Oversight Committee of Parliament	
		WA: Standing Committee on Public Administration, Legislative Council, WA Parliament	
	Shared leadership/promotion of Open Government: NZ Ombudsman, Minister Responsible for State Services and State Services Commissioner (publication of FOI statistics)	New Zealand	Improve trust and confidence in the regulator Improve trust and confidence in the system.
Functions and role of the Information Commissioner	Extensions of time provided by Ombudsman if the applicant has refused or not agreed to the extension (Freedom of Information Act 2016 (ACT) s 42).	ACT	Assist in the timely discharge of regulatory functions
	Investigate complaints about an agency or Minister's action, or failure to take action, in relation to any of the functions (Freedom of Information Act 2016 (ACT) s 69)	ACT	Improve trust and confidence in the regulator Improve trust and confidence in the system.
	Review, upon application, a decision about making open access information available (Freedom of Information Act 2016 (ACT) s 74).	ACT	Improve trust and confidence in the regulator Improve trust and confidence in the system.
	Make recommendations to agencies (GIPA s 92) including recommendations: that an agency reconsider a matter; as to public interest against disclosure; and as to general procedure of an agency (GIPA Act ss 93-95).	NSW	Assist in the timely discharge of regulatory functions

Category	Feature	Jurisdiction	Benefit
	Requirement to identify opportunities and processes for early resolution – including mediation – to promote settlement of an external review application (<i>Right to Information Act</i> (QLD) s 90).	QLD	Improve trust and confidence in the regulator Improve trust and confidence in the system.
	Provide advice, education and guidance to agencies in relation to compliance with any professional standards (<i>Freedom of Information Act 1982</i> (VIC) s 6I(2)(b)).	Victoria	Improve trust and confidence in the regulator Improve trust and confidence in the system.
Powers of compulsion and procedures	Declaration that information is open access information (<i>Freedom of Information Act 2016</i> (ACT) s 65).	ACT	Improve trust and confidence in the regulator Improve trust and confidence in the system.
	Require parties to attend mediation to resolve review matter (<i>Freedom of Information Act 2016</i> (ACT) s 81).	ACT	Assist in the timely discharge of regulatory functions Improve trust and confidence in the regulator
	Parties to a complaint may be represented when required to appear (<i>Freedom of Information Act 1992</i> (WA) s 70(6)).	WA	Improve trust and confidence in the system.
	The decision of the Commissioner is to be regarded as the decision of the agency and has effect accordingly (<i>Freedom of Information Act 1992</i> (WA) s 76(7))	WA	
	The Commissioner has to arrange to have his or her decisions published in full or in an abbreviated, summary or note form whichever is appropriate in order to ensure that the public is adequately informed of the grounds on which such decisions are made. (<i>Freedom of Information Act 1992</i> (WA) s 76(8))	WA	
Review/appeal avenue including fees and charges	Merits review undertaken by Civil and Administrative Tribunal (GIPA Act Pt 5 div 4).	NSW	
	NCAT may refer systemic issues to IC (GIPA Act s 111).	NSW	
	No review by IC if decision is or has been the subject of NCAT review (GIPA Act s 98).	NSW	
	Provides for appeals to the Supreme Court (<i>Freedom of Information Act 1992</i> (WA) Division 5)	WA	

Category	Feature	Jurisdiction	Benefit
Information commissioner review-timeframes	The Ombudsman may suspend the review process for up to 30 working days to facilitate mediation (<i>Freedom of Information Act 2016 (ACT) s 80A(2)</i>).	ACT	Assist in the timely discharge of regulatory functions
	A statutory 40-day time-frame for IC review commences when the IC receives the information necessary to complete the review (GIPA Act s 92A). Extensions are available by agreement with the applicant.	NSW	Improve trust and confidence in the regulator Improve trust and confidence in the system.



Brief – OAIC governance structure

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Subject:	OAIC governance structure

Introduction

- This brief summarises the current governance structure of the OAIC (**Part A**), the governance structure of comparable Commonwealth government agencies (**Part B**), and notes the Budget funding granted for the OAIC strategic assessment (**Part C**).

Part A: Current OAIC governance structure

- The OAIC ordinarily comprises three independent statutory officeholders – the Information Commissioner, FOI Commissioner and Privacy Commissioner. They are appointed by the Governor-General on nomination of the Minister.¹
- When the OAIC was established in 2010, it was recognised that the FOI functions and privacy functions were too extensive for a single office holder to effectively manage.² On this basis, the two new independent statutory positions of the Australian Information Commissioner and FOI Commissioner were created (in addition to the existing Privacy Commissioner position).
- While not expressly stated in the extrinsic materials to the Australian Information Commissioner Bill 2010, it appears that the Government’s intention at the time was to retain the efficiencies of individual, independent regulators (i.e. attaching regulatory

¹ *Australian Information Commissioner Act 2010* (Cth) s 14.

² Commonwealth, *Australian Information Commissioner Bill 2010 – Second Reading*, Senate Hansard, Senator Sherry (Assistant Treasurer), 13 May 2010, p 2835.

powers to individual office holders), rather than establish the OAIC as a commission-style regulator with distributed decision-making responsibility.³

- However, the Government of the day considered that it was necessary that there be a single agency head for strategic and administrative purposes. This view was expressed in the Government's second reading speech for the Australian Information Commissioner Bill 2010:

"[T]he appointment of multiple statutory officers of equal standing does not present an effective governance model. The Bill establishes the Australian Information Commissioner as head of the Office for both strategic and administrative purposes. It is intended that the FOI Commissioner will be mainly responsible for the FOI functions, and that the Privacy Commissioner will be mainly responsible for privacy functions.

While the Government expects that the three office holders will work together cooperatively, the Bill makes provision for the Australian Information Commissioner's view to prevail in any disagreement on matters which involve substantial policy decisions..."⁴

- As a result, the OAIC was established with the Information Commissioner as the agency head for the purposes of the *Public Service Act 1999* (Cth) and the accountable authority for the purposes of the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act).
- As the accountable authority of a Commonwealth entity, the Information Commissioner is responsible for the OAIC's **financial and administrative operations**.⁵
- The FOI Commissioner and the Privacy Commissioner are 'officials' for the purposes of the PGPA Act and subject to the duties of officials set out in that Act (**see Attachment A**).

FOI, privacy and information commissioner functions

- Under the *Australian Information Commissioner Act 2010* (Cth) (AIC Act), the all Commissioners may all perform FOI functions and privacy functions.⁶ However, only the Information Commissioner can perform the information commissioner functions.⁷ The FOI functions are extracted at **Attachment B**.
- The Government of the day considered that all three Commissioners should be able to perform the FOI and privacy functions for 'flexibility' within the OAIC but recognised that the FOI Commissioner and Privacy Commissioner would 'mainly' perform the FOI and privacy functions, respectively.⁸ In the second reading speech for the Australian Information Commissioner Bill 2010, the Government of the day noted that the FOI and

³ For a description of the distinction between an independent individual regulator and a commission-style regulator, see Australian Law Reform Commission, [Structure, functions and powers](#), ALRC Report 108, [46.10]-[46.12].

⁴ Commonwealth, [Australian Information Commissioner Bill 2010 – Second Reading](#), Senate Hansard, Senator Sherry (Assistant Treasurer), 13 May 2010, p 2835. See relatedly, [Revised Explanatory Memorandum to the Australian Information Commissioner Bill 2010](#).

⁵ *Public Governance, Performance and Accountability Act 2013* (Cth) s 12 and 15.

⁶ *Australian Information Commissioner Act 2010* (Cth) s 10-12.

⁷ *Ibid*.

⁸ See, *Australian Information Commissioner Act 2010* (Cth) s 10-12.

Information Commissioners in particular would “ensure a constant voice which not only addresses poor FOI practices, but also addresses attitudes that are not conducive to the presumption of openness...”⁹

- The AIC Act provides that if the FOI Commissioner or Privacy Commissioner performs a function, or exercises a power, expressed by an Act to be conferred on the Information Commissioner, the FOI Commissioner and/or Privacy Commissioner:
 - must perform the function or exercise the power upon his or her own belief or state of mind, and
 - the function or power is taken to have been performed or exercised by the Information Commissioner.
- Under the AIC Act, certain matters may only be undertaken with the approval of the Information Commissioner, such as issuing guidelines or making recommendations to the Minister about the desirability of legislative change.¹⁰ The Explanatory Memorandum notes that *‘this is intended to ensure consistency in policy advice and, in the case of disagreement, that the Information Commissioner’s view prevails.’*¹¹
- Aside from these specific matters, the **OAIC governance structure is unique** in that the AIC Act does not provide a decision-making structure for the exercise of FOI and privacy functions in a situation where all three Commissioners can exercise those functions. It was government’s intention that the three officeholders would work together cooperatively in discharging those functions rather than through any express provisions in the AIC Act.¹²
- In practice, during times when the OAIC had more than one Commissioner, a professional agreement was reached between the statutory officeholders regarding how the functions would be discharged on a day-to-day basis.¹³

Part B: Governance structure of other Commonwealth agencies

- Other Commonwealth regulatory bodies that feature multiple independent statutory officeholders are often required to follow a legislative framework for decision-making.
- For example, the enabling legislation of the Australian Human Rights Commission (AHRC) contains a legislative process for meetings of the AHRC.¹⁴ Under the AHRC Act, meetings may be convened by the Minister or President and a quorum is constituted by

⁹ Commonwealth, *Australian Information Commissioner Bill 2010 – Second Reading*, Senate Hansard, Senator Sherry (Assistant Treasurer), 13 May 2010, p 2835.

¹⁰ *Australian Information Commissioner Act 2010* (Cth) ss 11(4) and 12(4).

¹¹ *Revised Explanatory Memorandum to the Australian Information Commissioner Bill 2010*.

¹² Commonwealth, *Australian Information Commissioner Bill 2010 – Second Reading*, Senate Hansard, Senator Sherry (Assistant Treasurer), 13 May 2010, p 2835.

¹³ Prof J McMillan, ‘*Information Law and Policy – the Reform Agenda*’, AIAL Forum No. 66, Australian Institute of Administrative law website, July 2011, accessed 2 June 2023, p 58 states that at that time the “three Commissioners take joint responsibility for managing all office functions.”

¹⁴ *Australian Human Rights Commission Act 1986* (Cth) s 44.

one-half of office-holding members. Questions arising at a meeting of the AHRC are determined by a majority of the votes of the members present and voting.

- By way of further example, the *Competition and Consumer Act 2010* (Cth) provides a framework for meetings of the ACCC. The Chair may convene meetings of the Commission, at which three members form a quorum and where all questions are decided by a majority of votes of the members present and voting.¹⁵ The member presiding (ordinarily the Chair) has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- Similar provisions govern the Australian Securities and Investment Commission (ASIC) and the Australian Communications and Media Authority (ACMA).¹⁶
- These provisions appear to have the purpose of providing legislative guardrails for how the particular commission is to approach decision-making. Such frameworks enable statutory office holders to come together when required to operate as a collective decision-making body in areas of overlap or intersection in a way that is transparent and preserves their independence. However, specific questions on the operation of these frameworks may be best directed to the relevant agency or portfolio department.
- Of course, each regulatory framework features nuances that may be reflected in the relevant enabling legislation.
- For example, the OAIC's Commissioners can exercise both administrative decision-making functions (including merit review functions in the case of the FOI framework) as well as broader regulatory and educative functions. By contrast, these functions are separated at the AHRC, whereby the President exercises complaint handling powers and the Commissioners exercise educative, advocacy and related functions.¹⁷ Furthermore, Commonwealth agencies such as the AAT may exclusively exercise administrative decision-making functions and do not hold regulatory and educative functions.

Part C: OAIC strategic assessment

- In the 2023 Budget the OAIC received funding to conduct a strategic assessment to inform advice to Government about the resourcing required to ensure the OAIC is structured and resourced appropriately.
- Given the breadth of activities that make up the FOI and privacy functions and the interrelationship between the functions of the three statutory officeholders, the strategic assessment provides an opportunity to consider the structure and governance of the OAIC.

¹⁵ *Competition and Consumer Act 2010* (Cth) s 18.

¹⁶ See Division 4, Part 4 of the *Australian Securities and Investments Commission Act 2001* (Cth); Part 4 of the *Australian Communications and Media Authority Act 2005* (Cth).

¹⁷ *Australian Human Rights Commission Act 1986*, Part IIB; also see the AHRC, Guidelines on the distinct role of the President and the Commissioners of the Australian Human Rights Commission in relation to complaint handling and public comment, AHRC website, accessed 18 August 2023.

Attachment A – Duties of officials under the *PGPA Act 2013*

Subdivision A—General duties of officials

25 Duty of care and diligence

- (1) An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:
 - (a) were an official of a Commonwealth entity in the Commonwealth entity's circumstances; and
 - (b) occupied the position held by, and had the same responsibilities within the Commonwealth entity as, the official.
- (2) The rules may prescribe circumstances in which the requirements of subsection (1) are taken to be met.

26 Duty to act honestly, in good faith and for a proper purpose

An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties honestly, in good faith and for a proper purpose.

27 Duty in relation to use of position

An official of a Commonwealth entity must not improperly use his or her position:

- (a) to gain, or seek to gain, a benefit or an advantage for himself or herself or any other person; or
- (b) to cause, or seek to cause, detriment to the entity, the Commonwealth or any other person.

28 Duty in relation to use of information

A person who obtains information because they are an official of a Commonwealth entity must not improperly use the information:

- (a) to gain, or seek to gain, a benefit or an advantage for himself or herself or any other person; or
- (b) to cause, or seek to cause, detriment to the Commonwealth entity, the Commonwealth or any other person.

29 Duty to disclose interests

- (1) An official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity must disclose details of the interest.
- (2) The rules may do the following:
 - (a) prescribe circumstances in which subsection (1) does not apply;
 - (b) prescribe how and when an interest must be disclosed;
 - (c) prescribe the consequences of disclosing an interest (for example, that the official must not participate at a meeting about a matter or vote on the matter).

Attachment B - FOI functions under the *Australian Information Commissioner Act 2010*

8 Definition of *freedom of information functions*

The *freedom of information functions* are as follows:

- (a) promoting awareness and understanding of the *Freedom of Information Act 1982* and the objects of that Act (including all the matters set out in sections 3 and 3A of that Act);
- (b) assisting agencies under section 8E of the *Freedom of Information Act 1982* to publish information in accordance with the information publication scheme under Part II of that Act;
- (c) the functions conferred by section 8F of the *Freedom of Information Act 1982*;
- (d) providing information, advice, assistance and training to any person or agency on matters relevant to the operation of the *Freedom of Information Act 1982*;
- (e) issuing guidelines under section 93A of the *Freedom of Information Act 1982*;
- (f) making reports and recommendations to the Minister about:
 - (i) proposals for legislative change to the *Freedom of Information Act 1982*;
or
 - (ii) administrative action necessary or desirable in relation to the operation of that Act;
- (g) monitoring, investigating and reporting on compliance by agencies with the *Freedom of Information Act 1982*;
- (h) reviewing decisions under Part VII of the *Freedom of Information Act 1982*;
- (i) undertaking investigations under Part VIIB of the *Freedom of Information Act 1982*;
- (j) collecting information and statistics from agencies and Ministers about the freedom of information matters (see section 31) to be included in the annual reports mentioned in section 30;
- (k) any other function conferred on the Information Commissioner by the *Freedom of Information Act 1982*;
- (l) any other function conferred on the Information Commissioner by another Act (or an instrument under another Act) and expressed to be a freedom of information function.

- To be equipped to respond to regulatory challenges and opportunities, the OAIC requires internal expertise and technical and leadership capability, supported by robust governance, security, risk, legal and corporate support. As an integrity agency, the OAIC must be an exemplar of transparency, security and compliance.
 - The OAIC was granted approval by the Minister for the Public Service, Senator the Hon Katy Gallagher to permanently increase its SES cohort to include a Senior Assistant Commissioner, Assistant Commissioner Corporate and Assistant Commissioner Consumer Data Right.
 - The Senior Assistant Commissioner position was created to deliver the Chief Operating Officer functions and enable the Deputy Commissioner to focus on strategic regulatory matters and building analytical and tactical expertise across the OAIC. The Senior Assistant Commissioner focus is ensuring that the OAIC has capacity and capability to deliver its key activities within the full range of accountability frameworks set by government.
 - This division of duties has met its objective and delivered results for the OAIC. It has enabled the Deputy Commissioner to engage more deeply in the significant regulatory action being undertaken by the OAIC, support Assistant Commissioner's with strategic guidance and purposefully engage with government on legislative and policy proposals. Examples include the OAIC's chairing of the DP-Reg forum and co-chairing the Cyber Security regulator network.
 - Similarly, the Senior Assistant Commissioner has led an uplift in the OAIC's governance frameworks and delivered an improvement in the APS Census results. This position has engaged in the AGD's COO network and been responsible for the successful recalibration of the OAIC's corporate reporting to ensure alignment with best practice regulatory performance principles and delivered a number of significant change management programs, including the change of shared services partners and OAIC's successful transition to a hybrid work model.
 - The Assistant Commissioner, Corporate has successfully overseen the delivery of enabling services across the OAIC - including finance, legal, human resources, business analytics and reporting, and strategic communications functions, along with management of a range of corporate services, including accommodation, office management, records management information technology and management of shared services functions of ICT with the Shared Delivery Office and Department of Education and Workplace Relations.
-

Background

- The approved increase to the OAIC's SES cohort has ensured it has the level of senior executive leadership capability required to:
 - deliver on the increasing complex demands on our core regulatory functions
 - respond to current and expanding regulatory challenges, including in relation to well-resourced global entities
 - actively regulate by ensuring legal, communications and corporate support for guidance, investigations and seeking civil penalties as appropriate in the Federal Court
 - support key Government policies, including:
 - co-regulation of the Consumer Data Right
 - engagement in the APS Reform agenda
 - implementation of Regulator Best Practice
 - supporting the digital economy
 - deliberate coordination with domestic and international regulators, to amplify and de-conflict regulatory outcomes.

Process followed to increase the cohort

- The OAIC received the support of the Attorney-General, the Hon Mark Dreyfus KC MP and the Secretary to the Attorney-General's Department, Ms Katherine Jones in seeking to increase its SES cohort.
- The OAIC wrote to The Australian Public Service Commissioner (**Attachment A**) in March 2023 asking for his support and that he seek approval for the increase from Senator the Hon Katy Gallagher, Minister for Women, Minister for Finance and Minister for the Public Service.
- Minister Gallagher's approval was obtained in April 2023 (**Attachment B**) and three additional positions were permanently added to the OAIC's SES cohort. The ongoing cohort is 7, with a temporary position (Assistant Commissioner, Major Investigations) available to the OAIC until 30 June 2024 – bringing the current SES cohort is 8.

Signs of success

- The OAIC's 2023 Census result show an improvement against each of the Indexes. The OAIC now sits above the APS and small agency results across all six Indexes (see brief #2)
- A table acquitting the tasks allocated to the Senior Assistant Commissioner in July 2022 is at **Attachment C**

- In her summary of the most recent Audit and Risk Committee meeting (May 2023) (**Attachment D**), the Chair of the Committee provided the following observations to the Information Commissioner:
 - ‘In terms of the overall corporate operations of the agency the Committee has been hugely impressed by the efforts of the corporate team under the guidance of the Deputy Commissioner, Senior Assistant Commissioner and Assistant Commissioner, Corporate is placing on substantially strengthening corporate operations in the OAIC’.
 - ‘The performance report process has also been significantly refined and strengthened and the Committee awaits the result of the stakeholder survey’
 - ‘The further strengthening of the OAIC’s risk process is welcomed by the Committee. The Committee has typically seen the work in this space by the OAIC as a strength. The work of the Senior Assistant Commissioner and Director Governance and Risk in this space has strengthened further the quality and value of this work’
 - The strengthening of numbers in the People and Culture team and the appointment of a recruitment specialist is a very significant initiative.

Version:1.0	Cleared by: Melanie Drayton	Action officer: Melanie Drayton
Current at: 25/08/23	Phone number: s47E(d)	Action officer number: s47E(d)

Attachment C – Tasks of Senior Assistant Commissioner

Task	How task has been acquitted
Assess and align the OAIC's risk and reporting frameworks to ensure optimal efficiency, value and transparency	<p>Risk and reporting frameworks have been uplifted and embedded into business-as-usual processes. Risks are reviewed on a monthly basis and reported through Ops Committee and Audit & Risk Committee to Accountable Authority.</p> <p>In response to the hybrid working environment of the OAIC, the agency has updated its Business Continuity and Response Plan, Emergency Response Procedures and Work Health and Safety policies, to ensure risks are identified and mitigated to protect staff safety, health and wellbeing, and to support business continuity.</p> <p>NACC obligations socialised through all staff training and internal process built to meet NACC obligations.</p>
Lead and implement the recalibration of the OAIC's corporate reporting to ensure alignment with best practice regulatory performance principles and effectively communicates the OAIC's activities and value	<p>The OAIC's Performance Measurement Framework was redesigned with expert advice in early 2022 and aligned with Principles of regulator best practice.</p> <p>The Performance Measurement Framework is supported by defensible and repeatable reporting methodologies. Reporting is undertaken by skilled and experienced data experts within BARD. Branches of reporting work wherever possible.</p> <p>The OAIC's first stakeholder survey has been designed, completed and we are awaiting results.</p>
Ensure the effective transition to shared services is embedded and supported by people, policies and processes	<p>The new shared services arrangements have been embedded and capability of the finance and human resources team increased to ensure that operational needs are met.</p>
Provide strategic leadership to successfully develop and implement activity based work arrangements that deliver on the OAIC's purpose	<p>Consulted and settled OAIC Hybrid Work Principles.</p> <p>The OAIC's recruitment methods are aligned with our hybrid work model, ensuring we engage the best talent from across Australia. This approach had strengthened our employee value proposition, offering flexibility, a geographically diverse workforce and the ability to operate as a small and agile agency that offers an employee-focused hybrid way of working.</p>
Lead the delivery of activities endorsed by Executive arising from the Census results	<p>Census Roadmap delivered and 2023 Census results significantly improved. Attrition rate significantly decreased.</p>
Establishment of revised budget and financial reporting and accountabilities	<p>Budget delivered, budget reporting enhanced and agency's financial obligations met (delivered via CFO).</p>
Development of the OAIC's data capabilities	<p>Data Strategy delivered, data warehouse under construction and money secured to conduct a systems review (delivered via Director, BARD and Assistant Commissioner, Coporate).</p>
Commence a capability review of recruitment, retention, skills analysis, and learning development strategies to equip the OAIC as a contemporary	<p>Work undertaken with APSC's Centre of Excellence resulted in a draft workforce plan. This work has been superseded by Strategic Review and improved Census results.</p> <p>L&D calendar delivered.</p>

regulator in the short, medium and longer term	
Lead the Operations and OCF Committees	<p>Ops and OCF have been led.</p> <p>Also chaired Leadership, EL 1 Forum and Better Together Committee.</p>
Exercise the functions of Chief Security Advisor and Privacy Champion.	<p>Has exercised the CSA and Privacy Champion roles, in addition to Chief Risk Officer and acquired Chief Information Governance Officer role as a result of review of IAGB and creation of Information Governance Committee.</p>

Corporate

- OAIC's Corporate Branch has grown in response to the OAIC's operating environment. Notably, the OAIC transitioned shared service providers requiring increased capability across finance and people and culture areas. Additionally, the legal team received specified funding for specified activities.

Corporate Branch responsibility

- The Corporate Branch supports the regulatory work of the OAIC by delivering whole of agency coordination, reporting, governance & risk, strategic communications, finance, people & culture, legal and corporate services. This is distinct from other Branches, which have a specialised area of focus and responsibility for a particular function of the agency, for example FOI Branch is responsible for regulation under the FOI Act.
- When compared to the agency as a whole the ASL split for period ending 30 June 2023 is: Corporate 15% and legal 8% (total including legal 22%) 22%/ Other 78%.
- The benefits of a single corporate services group are that:
 - it reduces costs,
 - eliminates redundancies of duplicated activity,
 - ensures consistency of service to the 'outcome facing' Branches, and
 - ensures that resources are not diverted from the 'outcome facing' Branches.
- In the past 5 years the OAIC has grown from operational appropriation budget of \$13.825million with an ASL cap of 93 (FY2018-19), to a budget of \$46.470million and ASL cap of 192 (FY 2023-24).
- The funding structure of the OAIC has had a high proportion of terminating measures. In FY2018-19 55.9% and FY2023-24 34.2% of operational funding were terminating measures. This has required the OAIC to staff up quickly on short- and medium-term funding.

30 June 2023: Corporate Branch has a broad remit covering:

Function	Deliverables	Effect on Branches
Legal (13 staff)	Management of OAIC FOI requests, merits and judicial review, litigation, support major investigations and provision of advice across the Office	Management of OAIC FOI requests transferred to Legal in 2018. 68% of OAIC's current litigation matters are privacy related, 32% is FOI focused.
Finance (4 staff)	Budgeting, financial reporting, accounting and financial management, liquidity management, accounting transactional work, liaison with AGD etc	Advice and support for obtaining funding through NPPs, developing internal funding budgets, reporting financial performance to support economical, efficient, effective and ethical application of resources
People & Culture (5 staff)	Recruitment, onboarding, induction, learning & development, payroll management, staff reporting, improving staff retention, wellbeing, off-boarding.	Specialist advice to support effective recruitment strategies. Wellbeing focus has improved retention and Census results.
Governance & Risk (1 staff)	Audit committee, internal audit, risk and fraud, protective security, emergency management, control frameworks, information governance, reporting.	Uplift in control frameworks has supported staff focus on regulatory matters, creation of Information Governance Committee (and disbandment of Information Access Governance Board) has allowed FOI additional time to focus on complaints and decisions
Corporate Services (3 staff)	Portfolio/Parliamentary liaison and coordination, physical security, records management, facilities management, lease management, IT and shared service management, travel administration	Central coordination of QoNs, Estimates serves as an efficiency for line areas. Support and advice on records management, travel booking etc creates capacity in Branches to focus on regulatory work (travel bookings and records management we originally driven from Branches)

Strategic Communications (7 staff)	Media management, communications development, website development and maintenance, events, corporate reporting including Annual report and Corporate Plan, intranet and internal comms	
Business Analytics, Data and Reporting (BARD) (4 staff)	Data warehouse development and management, reporting development and maintenance, data development, analytics capability development, etc	Regular reporting conducted by Branches is now undertaken by data experts – uplifting processes and relieving Branches of this task

Branch staffing

- OAIC’s ASL cap for the year ended 30 June 2023 was 167.
- OAIC’s actual ASL for the year ended 30 June 2023 was 137
- For the financial year ending 30 June 2023 Corporate had total ASL of 20.0, plus 10.4 assigned to Legal Services.
 - The internal budget assigned 36.5 ASL, including 22.9 to general corporate area and 12.6 in the legal team.
- The proposed 2023-24 Budget assigns 33.1 to Corporate and 19.2 to Legal Services.
- There have been several factors effecting both Corporate and legal summarised as follows:
 - i. Enterprise bargaining (managing the bargaining process)
 - ii. The operating loss (managing the extra legal work around Medibank/Medilab)
 - iii. Shared Services Transition (bringing financial and P & C inhouse)
 - iv. Growth of the agency (increased support for matters like travel and IT support through laptop distribution due to geographic spread and hybrid working)

- The table below summarises these impacts:

Corporate Branch	Budget 22-23	Budget 23-24	Change YoY	NPPs	Optus	Bargain	Op Loss	AHRC to SDO/ DEWR	Growth
	Total	Total							
	23.6	33.1	9.5	6.0	1.0	-	-	2.0	0.5
Finance	3.0	4.0	1.0	-	-	-	-	1.0	-
Corporate Services	5.0	6.0	1.0	1.0	-	-	-	-	-
Gov, Risk & Sec	2.0	2.0	-	-	-	-	-	-	-
Data & Reporting	3.0	7.0	4.0	4.0	-	-	-	-	-
People & Culture	4.0	6.0	2.0	1.0	-	-	-	1.0	-
Strat Comms	5.6	7.1	1.5	-	1.0	-	-	-	0.5
Branch	1.0	1.0	-	-	-	-	-	-	-
Legal	10.8	19.2	8.4	3.0	2.0	1.0	1.0	-	1.4

Note the 34.4 ASL (23.6 Corporate & 10.8 Legal) was in the original budget. This was increased to an ASL of 36.5 for the March estimates brief due to the inclusion of the 8.5 months of 3 ASL under Optus (e.g. 3 x 8.5/12).

The overall changes across the branches are summarised below:

	Budget 2022-23 ASL	Actual 2022-23 ASL*	Proposed 2023-24 ASL	2022-23 Actual Total Branch	Proposed 2023-24 Budget Total Branch
R&S	36.8	30.8	41.8	\$4,501,388	\$6,085,000
FOI	22.4	20.3	22.4 (+8.9)	\$3,060,272	\$3,207,200 (+\$1,234,000)
DR	47.5	43.5	54.8	\$6,184,987	\$6,282,400
MI	5.6	2.9	7.5	\$529,950	\$1,805,700
Corporate	23.6	20.0	33.1	\$4,108,906	\$4,603,700
Legal Services	12.9	10.4	19.2	\$7,416,107	\$9,735,000
Executive	9.5	9.2	13.8	\$3,406,583	\$5,254,500

Designated funding

- The OAIC receives regular departmental appropriations each year adjusted for matters such as efficiency dividends and wage cost index adjustments. To source additional funding, either short term or ongoing, the OAIC submits a New Policy Proposal (NPP). The NPP sets out the OAIC's estimated effort to deliver the specific work program and results in a Cost Agreement being issued noting the purpose for the extra funding and the estimated resources required to deliver on that purpose. This includes the number of ASL assumed in determining the resource requirement.
- The Corporate Branch rarely receives specific funding through NPPs, rather it is funded through the overhead component of the NPPs.

- Indirect corporate costs driven by increased activity and headcount e.g. recruitment team increase, extra finance resource due to higher transaction volumes.
- The remainder are included in the Commissioner's contingency fund

Transition of shared services

- Finance, human resources, and IT services are provided through a shared service. The shared service was moved from the Australia Human Rights Commission (AHRC) to the Service Delivery Office (SDO) at the Department of Employment and Workplace Relations (DEWR) for IT services.
- The change in service provider came into effect on 16 May 2022 resulted in a change in service level. Unlike the shared services arrangements delivered by the AHRC, the current shared service providers' offering requires the OAIC to maintain a robust internal finance and human resources capability, with the commensurate internal controls and corporate reporting capacity.
- The recruitment activity resulting from additional privacy funding and staff attrition, as well as supporting staff through the pandemic and transition to a hybrid working model, has required an increase in human resources staff. Additional internal corporate support required as a result of the new shared services model has mostly been funded from savings realised from the transition from the AHRC to the new providers.
- An additional 8 FTE were required to increase capabilities and enable self-contained across the Finance and People & Culture teams.
- Following the transition of shared services, the net cost increase/saving is \$170,000, assuming a full year with fully implemented finance and people and culture teams. Per the proposed FY2023-24 budget. Further, the costs assume 183 APS staff and 7 labour hire staff.

Shared services savings

Role	Key responsibility
Finance and P&C fees	
SDO fee	\$600,000
DEWR fee	\$960,000
Additional 8 FTE	\$1,060,000
Total cost	\$2,620,000
AHRC fee	\$2,840,000
Net saving	\$220,000

Additional positions to support shared services (as at 30 June 2023)

Role	Status	Key responsibility
Finance		
Chief Financial Officer	Permanent position	Advice and support for funding, budgeting and reporting to support the Executive.
Assistant Director, Finance	Permanent position	Team supervision and support of CFO.
Finance Officer	Permanent position	Transactional support, including taxation matters
Accounts Officer	Permanent position	Transactional support, including accounts reconciliation
People and Culture		
Assistant Director (Recruitment), People and Culture	Permanent position	Driving and managing agency wide talent acquisition processes and projects
Assistant Director (Workforce Capability), People and Culture	Permanent position	Managing and advising on the development and implementation of agency-wide learning programs
People & Culture Adviser	Permanent position	Providing HR generalist support and advice to Branches, and supporting Assistant Directors
People & Culture Officer	Permanent position	Managing day to day BAU and providing HR advice and guidance to business areas

Legal

- The OAIC Legal Team is a dedicated legal team within the Corporate Branch responsible for the delivery of all OAIC legal services and the management of legal risk and external legal expenditure in the OAIC.
- The core Legal services provided include:
 - Providing legal advice across all OAIC functions and powers (including complaints, guidance, law reform, procurement, and employment)
 - Advising on investigations
 - Identifying legal risks and issues that impact on the OAIC and its regulatory obligations
 - Manage and instruct on all OAIC litigation
 - Processing FOI requests and reporting on our FOI decision making
 - Engage and instruct all external legal service providers, including Counsel

FOI processing and statistical reporting

- The Legal team is responsible for processing all FOI requests made to the OAIC. The Legal team also processes administrative access and APP12 requests made for access to material held in the Legal team.
- As at 24 August 2023, the Legal team has **20 FOI** requests and **6 administrative access** requests on hand.

Total number of FOI requests received by the OAIC as at 30 June 2023

	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23
Requests received	95	252	235	193	335	334
Personal	39	154	144	121	183	188
Other	56	98	91	72	152	146
Internal Review	2	21	13	17	25	56
Personal		10	7	12	14	26
Other	2	11	6	5	11	30
Total	97	273	248	210	360	390

- Please add in the number of litigation on hand and number of FOI requests. Also what year did FOI agency processing move from the FOI Branch to legal?
- Would it be helpful to set out the type of current litigation we have on foot – that is privacy/FOI
- The table below provides an overview of current litigation matters managed by the Legal team. There are 31 open litigation matters as at 24 August 2023.

Jurisdiction	Federal Court	AAT	Supreme Court Qld
Privacy	11	8	2
FOI	3	7	Nil
Total	14	15	2

Version:1.0	Cleared by: Annamie Hale	Action officer: Brenton Attard (supported by Simon Crone)
Current at: 25/08/23	Phone number:	Action officer number: s47E(d)