

ESTIMATES BRIEF: OTHER

Subject: FOI Senate Committee Report

Type: Report

[May 2024 brief content: [D2024/010498](#)]

Key details			
When did OAIC learn of matter?	28 March 2023		
Origin	Senate referred inquiry		
Is there an issue in the public domain?	Public submission, report		
Jurisdiction	FOI		
Responsible Branch & team	FOI Branch		
Content author	Jessica Eslick	Phone	9942 4119
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Brief current at	15 October 2024		

Brief overview of the FOI Senate Committee Report

- On 7 December 2023, the Senate’s Legal and Constitutional Affairs References Committee reported on its inquiry into the operation of Commonwealth Freedom of Information laws.
- The majority [report](#) made 15 recommendations including legislative, structural and cultural change, together with operational and resourcing revision and capability uplift. Not all recommendations were for OAIC action. Labor Senators tabled a [dissenting report](#) with 3 recommendations.

Current action – Structural reform within the OAIC

- The OAIC’s 2024–25 Corporate Plan sets out the OAIC’s key activities and performance measures. Commissioner regulatory priorities guided the development of the plan.
- On 10 October 2024, the OAIC transitioned to a new structure to support its regulatory objectives. The new structure changes how the OAIC works and will drive the transition to a more effective, harm-focused regulator.

- The new structure combines elements of privacy and FOI where practicable while retaining and highlighting regulated area expertise.
- Change within the office will be supported by a Reform Office.
- The number of IC reviews on hand has been reduced using the following strategies:
 - Implementing a whole of OAIC surge team to provide additional capacity for FOI regulatory functions, including IC review case management to allow FOI staff to work on older IC reviews.
 - Using data and reporting to identify and expedite priority cohorts, focussing on the OAIC's oldest IC reviews.
 - Lowering delegations to exercise particular powers (issuing directions, exercising discretion to decline to undertake an IC review) and greater use of compulsory powers.
 - Revising decision templates to capture key points from published decisions to promote consistency and more succinct decisions.
 - Reviewing letter templates, smartforms and guidance, including FOI Guidelines.
 - Establishing regular input meetings with FOI leadership team on specific cases.
 - Focusing on uplifting agency capability through surveys, engagement, education e.g. webinars and provision of guidance.
 - Emphasising team/branch targets (for example, 200 IC review decisions per year).
- See 'FOI IC Reviews' brief: [D2024/025017](#).

Recent developments

- See 'Designing the Future OAIC' brief: [D2024/027195](#).

Expected next steps/dates

- Consideration of strategic review recommendations, development of self-assessment tool, and webinar on vexatious applicant declarations.

ESTIMATES BRIEF: REGULATORY PRIORITY

Subject: FOI IC reviews

Type: Functions and background

Key details			
Responsible Branch & team	Freedom of Information, Significant Decisions		
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Clearance by	Rocelle Ago	Phone	
Brief current at	25 November 2024		

Brief overview of regulatory priority

- Increasing OAIC FOI regulatory and case management effectiveness and uplifting agency capabilities are key regulatory priorities for 2024/25.
- The OAIC is committed to delivering a timely IC review process, informed by the principles of informality, responsiveness and proportionality. The OAIC is working through a significant volume of IC reviews on hand, many of which are over 12 months old.

Current action

- To deliver a timelier IC review process and to support parties to understand the expectations and steps of the IC review process, revised procedure directions and Part 10 of the FOI Guidelines commenced on 1 July 2024. Key changes to the procedure directions include:
 - a requirement that respondents engage, or attempt to engage, with the applicant during the IC review, with a view to resolve or narrow the matters at issue
 - a requirement that applicants and respondents send submissions to each other at the same time as they send them to the OAIC, and
 - specific procedures for certain types of IC reviews, including reviews of deemed access refusal decisions, and access refusal decisions that are made on the basis that documents cannot be found or do not exist, designed to deliver adequate first instance decisions.
- requiring the provision of information and production of documents under s 55R of the FOI Act where an agency or minister fails to provide information and documents within the required timeframe. Failure to

comply with a notice to produce under s 55R is punishable by six months imprisonment.

Recent developments

- The OAIC finalised 1,748 Information Commissioner (IC) reviews in 2023–24, a 15% increase compared to 2022–23, when we finalised 1,518.
- We finalised 63% of IC reviews (1,108) within 12 months of receipt, compared to 78% in 2022–23 (1,179). The average time taken to finalise an IC review increased from 9.8 months in 2022–23 to 15.5 months in 2023–24. This reflects a focus on finalising legacy matters more than 12 months old, with 641 (36%) of IC reviews finalised pertaining to matters more than 12 months old. This includes finalisation of all matters lodged in 2018 and 2019 and a significant increase in the number of decisions made under s55K.
- As at 31 October 2024, we have reduced the number of IC reviews on hand to 1,754.
- In 2024/25, the OAIC has finalised more IC reviews (877) than we have received (605). This has been achieved despite a 22% increase in the number of IC reviews received compared to the same period last year.
- IC reviews on hand were reduced through a combination of strategies which facilitated improved finalisation rates including through:
 - The implementation of a whole of OAIC surge team, providing additional capacity and enabling FOI staff to work on older IC reviews.
 - Improved data capability to identify and expedite priority cohorts including access grants, charges, searches, practical refusals, ministers' matters and secrecy provisions.
 - Lowering delegations to exercise powers such as issuing directions, exercising discretion to decline to review applications and greater use of compulsory powers to facilitate case management.
 - Revision of decision templates, capturing key points and standard words or approaches from decided matters to promote consistency, and more efficient and succinct decision-making.
 - Review of correspondence templates, smartforms and guidance, including FOI Guidelines which agencies and ministers must have regard to when exercising a function under the FOI Act.
 - Establishment of case input meetings with FOI leadership team.
 - Engagement with agency and ministerial staff, including senior staff, through external meetings, webinars, to clarify expectations and inform our priorities.
 - Emphasis on team/branch targets (e.g, 200 decisions per year).

- A significant increase in the number of s 55K decisions continues:
 - 207 55K decisions were made in 2023-24 compared to 68 in the previous year. At the end of October 2024 there have already been 95 55K decisions issued.
 - the rate of matters set aside or varied in 2023-24 was 70% (60% set aside, 10% varied) and so far this financial year is 75% (60% set aside, 15% varied).

Background relevant to IC review timeframes: public matters only

- In 2024-25 to 31 October, 61% IC review applications derive from 3 agencies Department of Home Affairs (approx. 53%); Department of Veterans Affairs (6%) and Department of Defence (3%)
- IC review timeframes comparison between inquiry report¹ and 31 October 2024:

	As at 30 June 2023	As at 29 February 2024	As at 31 March 2024	As at 31 October 2024
<i>Greater than 48 months old (4 years)</i>	86	85	81	34
<i>Between 36 and 48 months (3-4 years)</i>	227	229	243	212
<i>Between 24 and 36 months (2-3 years)</i>	342	428	426	350
<i>Between 12 and 24 months (1-2 years)</i>	561	595	587	403
<i>Total over 1 year</i>	1,216	1,337	1,336	999

¹ Commonwealth, Parliamentary Debates, Senate, 7 December 2023: [Senate_2023_12_07_Official.pdf;fileType=application/pdf \(aph.gov.au\)](#)

On the first page of the brief, under the heading 'Key statistics', are the ages of information commissioner reviews. Those are reviews of original decisions, quite often decisions not to release documents, ongoing at the period close. The date of this table is as at 30 June 2023. And listen to these statistics. This is a system that is broken, and this is exhibit A of a broken system: age of IC reviews ongoing at period close, greater than 48 months that is more than four years 86; between 36 and 48 months, which is three to four years, 227; between 24 and 36 months, which is between two and three years, backlogged in the system, 342; and between 12 and 24 months, 561. That is 1,216 information commission review applications that have been stuck in the system for more than one year. How many documents could have been released under those applications? But disclosure was refused and the appeals are stuck in the system. This is exhibit A of a broken system. These statistics need to be made public. They should be given prominence in the annual report of the Office of the Australian Information Commissioner. They should be on the first page of that report. We shouldn't have to go through estimates process and an inquiry process in order to extract those key statistics. These key statistics tell the story of the state of health of our FOI system. It isn't fit for purpose. Urgent reform is required.

ESTIMATES BRIEF: OTHER

Subject: FOI Complaints

Type: Report

Key details			
Responsible Branch & team	Freedom of Information		
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Clearance by	Justin Lodge	Phone	02 9942 4163
Brief current at	22 November 2024		

Brief overview

- Increasing OAIC FOI regulatory and case management effectiveness and uplifting agency capabilities are key regulatory priorities for 2024/25.
- The OAIC is committed to delivering a timely complaint process, informed by the principles of informality, responsiveness and proportionality.
- In the 2023-24 year, the OAIC finalised 377 complaints, a 204% increase compared to the previous year. The increased finalisation rate has contributed to the elimination of the backlog of FOI complaints, achieved through an enhanced regulatory posture and a focus on the effectiveness of the OAIC's FOI practices, coupled with process changes such as the increased use of preliminary inquiries which has resulted in more complaints being finalised without proceeding to an investigation.
- The OAIC plans to undertake regular thematic investigations of FOI complaints in the 2024/25 year.

Current action

- The OAIC will be undertaking thematic investigations of FOI complaints in the 2024/25 year.
- Deemed refusals arising from a failure to comply with statutory timeframes remains an area of regulatory priority for the OAIC.
- In Quarter 2 (1 September – 31 December 2024), the OAIC is focusing on the extant capacity and capabilities within agencies to properly acquit their functions under the FOI Act.
- A self-assessment tool developed by the OAIC will provide the basis for assessment of capacity and capability building within agencies to

address non-compliant or at risk of non-compliance with statutory timeframes prescribed in s 15(5)(b) of the FOI Act.¹

Recent developments

Reduction in backlog

- The OAIC received 268 complaints in 2023–24, a 27% increase compared to 2022–23. The issues most commonly raised include not providing a response to an FOI request by the statutory timeframe, poor customer service, concerns regarding the practical refusal consultation process and the imposition or amount of a charge.
- In the 2023-24, the OAIC finalised 377 complaints, a 204% increase compared to the previous year.
- The increased finalisation rate has contributed to the elimination of the backlog of FOI complaints, achieved through an enhanced regulatory posture and a focus on the effectiveness of the OAIC’s FOI practices, coupled with process changes such as the increased use of preliminary inquiries which has resulted in more complaints being finalised without proceeding to an investigation.
- The OAIC has received positive agency responses to preliminary inquiries with agencies undertaking to improve their FOI practices and processes.

Expected next steps/dates

- As of 31 October 2024, the OAIC had 40 FOI complaints on hand. The significantly reduced volume of FOI complaints and the age of these complaints, now limited to 2023/24 allows the OAIC to be in a position to consider contemporary issues of concern.

¹ Agencies that might be subject to investigation may include: the Department of Veterans’ Affairs, Department of Homes Affairs, Department of Defence, National Disability Insurance Agency and the Australian Federal Police.

ESTIMATES BRIEF: OTHER

Subject: Agency FOI statistics

Type: Report

Key details			
Jurisdiction	Freedom of Information		
Responsible Branch & team	Freedom of Information Monitoring, Guidance and Engagement		
Content author	Raewyn Harlock	Phone	02 9297 9425
Clearance by	Rocelle Ago	Phone	02 9942 4205
Brief current at	9 October 2024		

Brief overview

- Agencies and ministers are required to submit FOI statistics at the end of each quarter, and at the end of financial year, including the number of requests received, on hand and finalised.
- The OAIC collects and publishes Australian Government agency and ministerial FOI statistics in our [annual report](#) and on data.gov.au.

Summary – agency FOI activity 2023–24

- **34,706 FOI requests** received (+ **1% more** than in 2022–23 (**34,219**)). The top 3 agencies are Department of Home Affairs (11,902), Services Australia (4,750) and the Administrative Appeals Tribunal (1,942).
- 25,119 FOI requests (**72%** of requests received) were for documents containing **personal information (down from 74% in 2022-23)**. **28%** of all requests were for **‘other’ (non-personal) information (9,587)**.
- 21,347 FOI requests were **decided**¹.

¹ Covers access granted in full, in part or refused.

- 4,465 requests were **granted in full** (**21%** of all requests decided – down from 25% in 2022–23 and 39% in 2021–22).
- 11,659 FOI requests were **granted in part** (**55%** of all requests decided – up from 52% in 2022–23 and 42% in 2021–22).²
- 5,223 requests were **refused** (**24%** of all requests decided – up from 23% in 2022–23 and 19% in 2021–22).
- **15,210** of all requests decided involved **exemption claims** (**71% of all requests decided**, compared with 69% in 2022–23). **Section 47F** (personal privacy) remains the most claimed exemption (applied in 39% of all decisions in which an exemption was claimed – same as in 2022–23).
- **74%** of all **FOI requests** were decided within **statutory timeframes** - **same as 2022–23** (compared to 70% in 2021–22).³
- **69%** of all **personal requests** were **decided in time**. **84%** of all **‘other’** (non-personal) **requests** were **decided in time**.
- 36% of requests decided by Home Affairs and 49% of requests decided by NDIA were decided in time.
- The overall cost of administering FOI rose to **\$86.24 million** (23% more than 2022–23). Legal expenditure rose 31% compared with 2022–23 (litigation expenditure was 35% higher and general legal advice costs 25% higher).
- The OAIC has undertaken an agency survey and is implementing a self assessment tool to better identify resourcing and capability levels within

² In December 2022, the OAIC updated the FOI Statistics 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.

³ This refers to requests for which a decision was made. It does not include requests withdrawn by the applicant.

agencies and to promote timelier, low cost FOI practices including administrative decision-making by APS officers.

ESTIMATES BRIEF: OTHER

Subject: Compliance with FOI Statutory Timeframes

Type: Report

Key details			
When did OAIC learn of matter?	Ongoing compliance issues		
Origin	Regulatory matters		
Is there an issue in the public domain?	Compliance issues publicly known		
Jurisdiction	FOI Act		
Responsible Branch & team	Freedom of Information		
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Clearance by	Rocelle Ago	Phone	02 9942 4205
Brief current at	25 November 2024		

Brief overview of other

Prominent issues

- Agencies have decided 74% of FOI requests within the statutory timeframe between 1 July 2024 – 30 September 2024, consistent with the previous year.
- Agencies continue to face challenges with meeting processing timeframes under the FOI Act. The OAIC sees this across various FOI oversight and regulatory functions, including FOI statistics, IC reviews, FOI complaints, and extension of time applications:

FOI Statistics

- Only **74%** of all **FOI requests** were decided within **statutory timeframes - same as 2022–23** (compared to 70% in 2021–22).¹
- Only **69%** of all **personal requests** were **decided in time**. **84%** of all **'other'** (non-personal) **requests** were **decided in time**.
- Only 36% of requests decided by Home Affairs and 49% of requests decided by NDIA were decided in time.

¹ This refers to requests for which a decision was made. It does not include requests withdrawn by the applicant.

IC reviews (review of deemed access refusal)

- The OAIC has received 465 IC reviews of deemed refusal decisions between 1 July 2024 – 31 October 2024. This is an 77% increase on the comparable period from the previous year.
- The Department of Home Affairs accounts for 66% (307) of deemed refusal decisions received by the OAIC during this period, which is a 136% increase from the previous year.
- 10 agencies account for 91% (422) of the deemed refusal decisions received by the OAIC between 1 July 2024 – 31 October 2024 (refer to page 13 of D2024/025290 Senate Estimates Brief – Key statistics OAIC).
- This increase in deemed refusal decisions may be due to:
 - the Department of Home Affairs' year on year decline of the percentage of decisions within time, which gives rise to IC review (36% in 2023–2024, 38% in 2022–2023, 45% in 2021–22, 62% in 2020–21, 66% in 2019–20 (66%) and 74% in 2018–19).
 - more applicants are exercising their rights to seek IC review due to the outcomes that the OAIC can facilitate in its review of deemed access refusal decisions.
- The OAIC has prioritised the review of deemed access refusal decisions consistent with the Direction on IC review procedures to be followed by agencies, balanced with its regulatory priority to significantly reduce the IC review backlog. The significant increase in the number of IC reviews of deemed access refusals requires resources to be expended in registering, triaging, commencing and resolving these IC reviews, and issuing OAIC notices and directions such as notices to compel the production of documents required to progress the IC review.

FOI complaints

- The OAIC continues to receive a large volume of FOI complaints about agencies' compliance with timeliness.
- The OAIC received 268 complaints in 2023–24, a 27% increase compared to 2022–23. The issue most commonly raised is timeliness.
- As at 31 October 2024, the top 3 agencies with the highest volume of FOI complaints ongoing are Department of Veterans Affairs at 20% (8 complaints), Department of Home Affairs at 15% (6 complaints) and the Australian Federal Police at 10% (4 complaints).

- Agencies' compliance with statutory timeframes under s 15(5)(b) of the FOI Act has been the subject of various investigations, including two Commissioner Initiated Investigations (CIIs) into the Department of Home Affairs since the commencement of the OAIC.
- The OAIC plans to undertake regular thematic investigations of FOI complaints in the 2024/25 year.

Extension of time applications (EOTs)

- The OAIC received 1,904 extensions of time notifications where agreement reached or where IC review to be conducted for the period 1 July 2024 – 31 October 2024, which is a 47% increase on the comparable period in the previous year.
- The OAIC received 238 extension of time applications requiring its decision for the period 1 July 2024 – 31 October 2024, this is a 39% decrease on the previous year.
- The decrease in the EOT applications may be contributing to the increase in the number of IC reviews sought of deemed refusal decisions.

Current action

- Engagement with at-risk agencies to mitigate non-compliance with statutory timeframes, and associated issues with managing access requests under the FOI Act, Privacy Act and through administrative release.
- Deemed refusals decisions arising due to non-adherence to statutory timeframes remains an area of regulatory priority for the OAIC.
- In Quarter 2 (1 October – 31 December 2024), the OAIC will be focusing on the extant capacity and capabilities within agencies to properly acquit their functions under the FOI Act.
- A self-assessment tool developed by the OAIC will provide the basis for assessment of capacity and capability building within agencies to address non-compliant or at risk of non-compliance with statutory timeframes prescribed in s 15(5)(b) of the FOI Act.²

Recent developments

- As part of our regulatory functions, the OAIC regularly meets with the agencies for managing compliance with timelines.

² Agencies that might be subject to investigation may include: the Department of Veterans' Affairs, Department of Home Affairs, Department of Defence, National Disability Insurance Agency and the Australian Federal Police.

Expected next steps/dates

- The OAIC will continue to undertake regulatory engagement with the agencies in setting out our expectations for agencies to manage their compliance with timelines under the FOI Act.
- The OAIC plans to undertake regular thematic investigations of FOI complaints in the 2024/25 year of those identified agencies at risk of non-compliance with statutory timeframes.

Background: public matters only
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Issues of note for OAIC

- Agencies sustained inability to comply with timelines under the FOI Act, noting the various regulatory actions taken by the OAIC over the past 12 years coupled with the nature and number of IC review applications (deemed refusal decisions), EOTs and FOI complaints received by the OAIC.
- Timeliness issues across FOI regulatory functions relating to top 5 agencies

Agency	Deemed IC review applications		FOI complaints regarding timeliness		EOT s 15AA notifications		EOT applications (OAIC decisions)		FOI Statistics (Agency timeliness)	
	Q1 – FY2025	% change from Q1- FY2024	Q1 – FY2025	% change from Q1- FY2024	Q1 – FY2025	% change from Q1- FY2024	Q1 – FY2025	% change from Q1- FY2024	Q1 – FY2025	% change from Q1- FY2024
DHA	223	128%	13	550%	76	117%	9	29%	38%	+3.7 p.p.
DOD	20	82%	5	25%	122	54%	32	7%	60%	-14.9 p.p.
DVA	19	-21%	1	-50%	28	-13%	4	-85%	49%	-42.9 p.p.
AFP	11	83%	3	50%	65	124%	4	-84%	64%	+12.2 p.p.
NDIA	10	-33%	4	0%	102	10100%	4	-43%	44%	-0.1 p.p.

ESTIMATES BRIEF: OTHER**Subject: Use of 'apps' to conduct government business****Type: Report**

Key details			
When did OAIC learn of matter?	N/A		
Origin	OAIC identified / media		
Is there an issue in the public domain?	Media comment		
Jurisdiction	FOI		
Responsible Branch & team	FOI Branch, Monitoring, Guidance and Engagement team		
Content author	Raewyn Harlock Sara Peel	Phone Phone	(02) 9297 9425 (02) 9942 4142
Clearance by	Rocelle Ago	Phone	(02) 9942 4205
Brief current at	21 November 2024		

Brief overview of issue: Use of 'apps' to conduct government business

- The FOI Act operates to capture app-based messages that are contained within an agency's systems and those in existence within personal devices. These documents can be obtained and produced through searched/retrieved processes.
- However, determining what documents must be preserved falls under the retention requirements in the *Archives Act 1983* (Cth).
- The OAIC has collaborated with the National Archives Authority (NAA) to promote sound information governance practices in the use of encrypted messaging and has commenced a project on the official use of apps to conduct government business to inform the Commissioner's understanding of agencies' policies and procedures regarding the use of EMS.

Current action

- The OAIC's agency resources explain that documents saved on apps fall within the definition of 'document' in s 4 of the FOI Act:
 - [What is considered a document under the Freedom of Information Act 1982?](#)
 - [Taking all reasonable steps to find documents](#)
- Part 3 of the FOI Guidelines encourages agencies to develop guidelines and procedures for the efficient storage and retrieval of information held on mobile devices as well as servers, hard disks and portable drives (FOI Guidelines at [3.215]).

Recent developments

- On 20 May 2024, the Information Commissioner wrote to the Director-General of National Archives to highlight issues associated with the use of disappearing messages in online applications and the implications for information policy in Australia.
- On 27 May 2024, the OAIC and National Archives issued a joint statement to mark 'Open Government Week'. The statement referred to technological advances, including encryption, and noted that while there are benefits to these advances, the right to access government information must be considered and managed.
- OAIC has commenced a project on the official use of apps to conduct government business. On 22 November 2024, the Information Commissioner wrote to a cohort of 25 agencies, ranging in size and function, requesting they complete a series of questions. This exercise will better inform the Commissioner's understanding of agencies' policies and procedures regarding the use of EMS.

Expected next steps/dates

- The Information Commissioner will prepare a report to the Attorney-General under s 7 of the AIC Act in relation to the EMS project. The OAIC will also prepare guidance to support agency compliance with the Archives Act, FOI Act and Privacy Act in their use of EMS. OAIC is consulting with National Archives of Australia in progressing this project.

Background: public matters only

- Recent IC review decision: *Paul Farrell and Department of Foreign Affairs and Trade (Freedom of information)* [\[2024\] AICmr 28](#) (12 February 2024) (in which access was sought to correspondence, including that sent by message based apps).
- UK ICO published report [Behind the screens: ICO calls for review into use of private email and messaging apps within government | ICO](#) (11 July 2022), which details a yearlong investigation into the use of these channels by Ministers and officials at the Department of Health and Social Care (DHSC) during the pandemic.

ESTIMATES BRIEF: OTHER (PROMINENT ISSUE)

Subject: FOI Change of government and official ministerial documents of a Minister

Type: (IC review)

Key details			
When did OAIC learn of matter?	25 September 2024		
Origin	OAIC identified (IC reviews)		
Is there an issue in the public domain?	Attorney-General (Cth) v Patrick [2024] FCAFC 126 (25 September 2024)		
Jurisdiction	FOI		
Responsible Branch & team	FOI Branch		
Content author	Raewyn Harlock	Phone	(02) 9297 9425
Clearance by	Rocelle Ago	Phone	(02) 9942 4205
Brief current at	22 November 2024		

Brief overview

- In 2023 the former IC preserved the position in *Rex Patrick and Attorney-General (Freedom of information)* [\[2023\] AICmr 9](#) (28 February 2023) that if the requested document is not in the new Minister's possession, the FOI Act will not apply as the document is no longer an 'official document of a minister'.¹ This position derives from the interpretation of s 4 'official document of a Minister or official document of the Minister' as a document in the possession of a Minister.²

¹ Version 1.6 of Part 2 of the FOI Guidelines (v 1.6 of Part 2 of the FOI Guidelines, paragraph [2.52] (19 December 2016 to 15 July 2024) paragraph [2.52].

² See other relevant decisions: '*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) and '*ADL*' and *Attorney-General (Freedom of Information)* [2023] AICmr 36 (17 May 2023).

- This decision was subject to appeal the Federal Court (*Patrick v Attorney-General (Cth)* [\[2024\] FCA 268](#)) and the Full Court (*Attorney-General (Cth) v Patrick* [\[2024\] FCAFC 126](#)).
- The Full Court has remitted a review to the OAIC for re-determination.

Current action

- Parts 2 and 10 of the FOI Guidelines were updated to reflect the initial Federal Court decision (*Patrick v Attorney-General (Cth)* [\[2024\] FCA 268](#)) (new paragraph [10.32] from 1 July 2024 and new [2.63] to [2.67] dated 16 July 2024).

Recent developments

- The Full Court in *Attorney-General (Cth) v Patrick* [\[2024\] FCAFC 126](#) dismissed the appeal and agreed with the primary judge in finding:
 - the time for assessing whether a document is an ‘official document of a Minister’ is the time the request is made ([65])
 - there is a duty not to frustrate the rights of the requesting party to have the FOI request determined, including on review or appeal ([93]).
- The Full Court disagreed with the primary judge’s ‘reasoning’ ([68]) that:
 - the Minister responsible for dealing with a request must maintain possession of the document until the request is finally determined ([94])
 - a new Minister may demand from a former Minister that they transfer custody of a document that is the subject of an unresolved request ([94]).

Expected next steps/dates

- The OAIC is progressing the remitted decision in accordance with usual case management processes.
- The OAIC will update Parts 2 and 10 of the FOI Guidelines to reflect the Full Court decision.

ESTIMATES BRIEF: REGULATORY PRIORITY**Subject: General FOI matters****Type: Background**

Key details			
Origin	Statutory functions		
Is there an issue in the public domain?	No		
Jurisdiction	AIC Act and FOI Act		
Responsible Branch & team	Freedom of Information Monitoring Guidance and Engagement		
Content author	Raewyn Harlock	Phone	(02) 9297 9425
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Brief current at	22 November 2024		

IC Review Procedure Direction

- Revised IC review procedure directions were issued under s 55(2)(e)(i) of the FOI Act from 1 July 2024: *Direction as to certain procedures to be followed in IC reviews for agencies and ministers* and *Direction as to certain procedures to be followed by applicants in Information Commissioner reviews*.
- The revised Procedure Directions introduced changes to IC review procedures, including the introduction of engagement during the commencement of the IC review process, setting timeframes for the provision of relevant documents/information and introducing specific procedures to be followed for searches and deemed access refusal decisions.

Webinars

- The OAIC held webinars for FOI practitioners on extensions of time (10 September 2024), FOI complaints (22 October 2024), and Vexatious Applicant Declarations (19 November 2024).

Guidance and IPS

- The [2023 Information Publication Scheme review survey](#), conducted every 5 years (ss 8F and 9 of the FOI Act), has been finalised.
- The following Guidelines have been reissued:
 - [Part 2 \(Scope and application of FOI Act\)](#): revised July 2024
 - [Part 5 \(Exemptions\)](#): revised May 2024
 - [Part 6 \(Conditional exemptions\)](#): revised May 2024
 - [Part 9 \(Internal review\)](#): revised April 2024

Upcoming work

- The OAIC recently conducted a survey of practitioners training needs to strengthen our understanding of agencies' regulatory guidance needs. We will use the results to develop targeted and useful resources for FOI practitioners. Following from the survey the OAIC is developing a self-assessment tool to assist agencies assess the maturity of their FOI systems and procedures.
- Part 2 (Scope and application of FOI Act) to be reissued to reflect Full Court decision in *Attorney-General (Cth) v Patrick* [\[2024\] FCAFC 126](#).
- Consultation on Part 3 (Processing and deciding requests for access) of the FOI Guidelines
- Development of e-learning modules.

ESTIMATES BRIEF: OTHER (REGULATORY PRIORITY, PROMINENT ISSUE)

Subject: Online Safety Amendment (Social Media Minimum Age) Bill 2024 and Age Assurance Technology Trial

Type: Advice

Key details			
When did OAIC learn of matter?	Government announced the introduction of a minimum age for social media access on 10 September 2024. The Age Assurance Technology Trial was announced on 1 May 2024.		
Origin	Government media release		
Is there an issue in the public domain?	Online Safety Amendment (Social Media Minimum Age) Bill 2024 and the Age Assurance Technology Trial		
Jurisdiction	General privacy		
Responsible Branch & team	Regulatory Intelligence and Strategy		
Content author	Rebecca Brown	Phone	s 47F
Clearance by		Phone	
Brief current at	21 November 2024		

Brief overview of issue

- The Government is progressing two related initiatives as part of its online safety agenda:
 1. the introduction of a legislated minimum age (16 years) for access to social media; and
 2. a trial of age assurance technologies to determine the effectiveness of available technologies to prevent access to online pornography by children under the age of 18, and to age-limit access to social media platforms for those under 16 years of age.

Current action

- The Online Safety Amendment (Social Media Minimum Age) Bill 2024 was introduced to Parliament on 21 November 2024.
- The Bill was referred to the Environment and Communications Legislation Committee for inquiry and report by Tuesday 26 November 2024. The OAIC made a submission to the inquiry on Friday 22 November 2024

- On 15 November 2024, the Government announced the Age Check Certification Scheme (ACCS) was awarded the tender for the Age Assurance Technology trial.
- OAIC representatives received a briefing from ACCS on the trial and project plan on 25 November 2024.

Recent developments

Online Safety Amendment (Social Media Minimum Age) Bill 2024

- On 10 September 2024, the PM announced the introduction of legislation this year to establish a minimum age for social media access.
- On 8 November 2024, the PM announced the Government would legislate 16 as the minimum age for access to social media following endorsement by National Cabinet.
- The Bill introduced to Parliament on 21 November 2024 contains privacy safeguards that would:
 - prohibit platforms from using personal information collected for age assurance for any other purpose unless the individual has consented or APPs 6.2(b), (c), (d) or (e) applies, and
 - require platforms to destroy information collected for age assurance purposes after using or disclosing it for the purposes for which it was collected.
- A breach of the safeguards will be an interference with privacy under the Privacy Act.
- The OAIC was consulted by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) during the development of the Bill on the privacy safeguards.
- Government has confirmed the OAIC will be provided with additional resourcing to oversee the privacy safeguards.

Inquiry into the Online Safety Amendment (Social Media Minimum Age) Bill 2024

- The OAIC's submission to the Committee:
 - Highlighted that the introduction of a minimum age for access to social media will have privacy impacts for all Australian users of social media as social media platforms will be incentivised to collect, use and store additional personal information for age assurance purposes.
 - Expressed support for the privacy safeguards in the Bill particularly the inclusion of the definition of consent consistent

with the proposals agreed-in-principle by Government in its response to the Privacy Act Review.

- Called for wider privacy law reform and that the second tranche of privacy reforms to be progressed as a matter of urgency.

Age Assurance Technology Trial

- The Government announced the age assurance trial on 1 May 2024.
- DITRDCA convened a Cross-Government Working Group consisting of agencies working across online safety, privacy, security, and human and consumer rights issues to, amongst other matters, develop privacy and security criteria to assess age assurance technologies in Australia. The OAIC is a member of the working group.
- The ACCS will conduct the trial and is an independent accredited conformity assessment body for age assurance technologies. It will lead a consortium of industry experts to commence the trial immediately.
- The trial is expected to provide guidance to the Government, the eSafety Commissioner and industry about age assurance technology options and where the market is currently situated.
- Government expects that the trial outcomes will be instructive for social media platforms in terms of what steps are reasonable to take to prevent users under the minimum age from holding an account on the platform.

Expected next steps/dates

- The timing of the passage of the Bill is subject to the parliamentary process.
- The Bill will commence 12 months after the date of Royal Assent.
- With the appointment of ACCS as the successful tenderer, the age assurance trial will commence immediately with a view to providing a final report to Government by mid-2025.

ESTIMATES BRIEF: MATTER**Respondent name: Medibank Private Limited (Medibank)****Type: Commissioner Initiated Investigation (CII)**

Key details			
When did OAIC learn of matter?	October 2022		
How was OAIC advised/origin?	Medibank notified the OAIC under the NDB in October 2022.		
Date action commenced	1 December 2022 – date that OAIC formally commenced a CII		
Age of matter in days	531 days		
Jurisdiction	APP 11.1		
Related representative action?	Yes, there is representative complaint on foot		
Responsible Branch & team	Major Investigations		
Content author	Warren Jacobs	Phone	02 9942 9066
Clearance by	Rob Ghali	Phone	02 9942 4201
Brief current at	25 November 2024		

Brief description of matter

- This is a data breach involving unauthorised access to Medibank’s systems and exfiltration of sensitive personal information which affected approximately 9.7 million individuals.

Current action

- As of 5 June 2024, the OAIC commenced Civil Penalty Action against Medibank by Concise Statement.
- [Media Release](#)
- Since filing a Concise Statement, OAIC has amended the Statement of Claim and Medibank is required to provide its defence to this amended Statement of Claim by 13 December 2024

Background: public matters only

- The OAIC alleges that from 12 March 2021 to 13 October 2022, Medibank seriously interfered with the privacy of 9.7 million Australians by failing to take reasonable steps to protect their personal information from misuse and unauthorised access or disclosure in breach of s 13 G of the Privacy Act 1988 (the Act) and APP 11.1.

- s 47E(d) [Redacted]
- The OAIC alleges that Medibank breached APP 11.1 as they failed to take sufficient steps as are reasonable in the circumstances to protect the information it holds from misuse, interference and loss, as well as from unauthorised access, modification or disclosure steps. Some reasonable steps that could have been taken include implementing appropriate:
 - MFA for authenticating users to use Global Protect VPN and for users to access sensitive or critical information assets.
 - Privileged access management and monitoring for privileged accounts.
 - Password complexity requirements for users.
 - Security monitoring processes to detect and respond to security incidents.
 - Security assurance testing for sensitive and critical assets.
 - Application controls for critical servers.
 - Effective contractor assurance.
- The OAIC alleges that Medibank breached s 13G as they engaged in acts or practices that were serious or repeated interferences with the privacy of an individual. The OAIC alleges that the acts were serious due to the nature of the deficiencies in Medibank’s cybersecurity and information security framework and the nature of information held.

Expected next steps/dates

- s 47E(d) [Redacted]
- [Redacted]

Issues of note for OAIC

- None identified currently

ESTIMATES BRIEF: MATTER

Respondent name: HWL Ebsworth Lawyers (HWLE)

Type: Commissioner Initiated Investigation (CII)

Key details			
When did OAIC learn of matter?	8 May 2023		
How was OAIC advised/origin?	HWLE reported a data breach to the OAIC under the NDB scheme		
Date action commenced	1 February 2024 – following recommendation by NDB to SRC (formerly RAC)		
Age of matter in days	257 days		
Jurisdiction	APP 11.1 and s 26WL(3)		
Related representative action?	Yes		
Responsible Branch & team	Major Investigations Branch		
Content author	Eleanor Tjondro	Phone	02 9246 0775
Clearance by	Rob Ghali	Phone	02 9942 4201
Brief current at	25 November 2024		

Brief description of matter

- On 8 May 2023 HWLE reported a data breach to the OAIC under the NDB scheme. The data breach arose from a threat actor gaining access to the HWLE IT Network on or around 29 March 2023. The threat actor ultimately exfiltrated around 4TB of data (approximately 2.37million files).
- HWLE’s data breach review was completed in mid September 2023 and took some time due to the volume and complexity of data impacted by this incident. HWLE is working with impacted entities to notify their affected individuals.
- A number of Australian Government entities, State/Territory agencies and private sector organisations were impacted. The OAIC is also an affected party.
- On 1 February 2024 a CII was commenced into HWLE’s acts and practices in relation to APP11.1 and s 26WL(3).
- On 20 February 2024, the OAIC served HWLE with a letter to formally initiate an investigation pursuant to s 40(2) of the Privacy Act.

Current action

- The investigation is in its initial stages and Major Investigations has exercised a range of regulatory tools to obtain documents and information including the use of statutory notices and compulsory examinations.

Recent developments

- Major Investigations’ last correspondence with HWLE was on 22 November 2024 in relation to the issuance of a further statutory notice.

s 47E(d)

Background: public matters only

Expected next steps/dates

- Major Investigations is assessing the information received to date from statutory notices and compulsory examinations with a view to determining appropriate regulatory action.

s 47E(d)

ESTIMATES BRIEF: MATTER**Respondent name: Pareto Phones****Type:** Investigation / Order for production of documents

Key details			
How was OAIC advised/origin?	NDB, data breach in April 2023		
Date action commenced	CII opened 6 October 2024 Closed April 2024		
Jurisdiction	APPs		
Related representative action?	No		
Responsible Branch & team	Dispute Resolution, Commissioner Initiated Investigations team		
Content author	Natalie Le	Phone	02 9942 4158
Clearance by	Andre Castaldi	Phone	02 9942 4124
Brief current at	22 November 2024		

Brief background – Pareto investigation

- On 6 October 2023, the OAIC commenced a Commissioner-initiated investigation into Pareto Phone Pty Ltd (**Pareto**) in relation to its compliance with Australian Privacy Principle 11.2.
- The investigation related to a data breach that impacted Pareto in April 2023, which resulted in the exfiltration and publication of data on the dark web in August 2023. The dataset included dates of birth, financial information, and donation histories relating to donors across approximately 90 charity partners.
- The OAIC’s investigation into Pareto was concluded in April 2024. Noting that Pareto was placed in liquidation on 27 October 2023, the possible remedies that the OAIC could obtain for the community would not be proportionate to the resources required.

Current action – guidance for sector

- On 22 October 2024, the OAIC issued updated guidance for the charity and not-for-profits sector to ensure appropriate guidance regarding that sector's obligations under the Privacy Act when engaging third party providers to assist in fundraising activities, particularly when the third parties are provided with the personal information of donors.
- The OAIC has liaised with the Australian Charities and Not-For-Profits Commission in relation to this.

Recent developments – Senator Smith motion

- On 21 August 2024, Senator Dean Smith brought forward a motion requiring the production of documents recording correspondence between any or all of the OAIC, the Attorney-General, the Assistant Minister for Competition, Charities and Treasury and the Australian Charities and Not-for-profits Commission in relation to the undertaking and subsequent ending of an investigation by the OAIC into the data breach affecting charity telemarketer Pareto Phone.
- On 30 September 2024, the OAIC produced documents in compliance with this motion.

ESTIMATES BRIEF: MATTER**Respondent name: TikTok****Type:** Preliminary inquiries

Key details			
When did OAIC learn of matter?	EU children's data rulings: April 2023 and September 2023 Pixel: December 2023		
How was OAIC advised/origin?	Media, senate estimates hearings		
Date action commenced	19 January 2024		
Date action ceased	21 May 2024 (124 days)		
Jurisdiction	APPs		
Related representative action?	No		
Responsible Branch & team	Dispute Resolution, Commissioner initiated investigations team		
Content author	Iris Vayzer & Natalie Le	Phone	02 9942 4081
Clearance by	Andre Castaldi	Phone	02 9942 4124
Brief current at	22 November 2024		

Brief description of matter

- On 19 January 2024 the OAIC issued preliminary inquiries to TikTok Pte Ltd (TikTok), a company incorporated in Singapore and the entity responsible for providing the TikTok application.

Inquiries of TikTok

- The inquiries related to TikTok's handling of personal information, particularly children's information and the TikTok tracking pixel.
- TikTok provided responses to the OAIC's inquiries on 16 February and 23 February 2024 following granted extension of time requests made on the basis of the quantity of information requested and the need for TikTok to consult across various teams.

Current action

- The OAIC finalised the assessment of the matter on 22 May 2024.
- On closure, the OAIC issued a letter to TikTok on 22 May 2024 outlining that the OAIC had decided to conclude its assessment into the Pixel and the extent it raised concerns with compliance with the APPs and:
 - a) requested that TikTok prepare video and text resources for Australian users under the age of 18 to understand the TikTok Privacy Policy, similar to that for teenage users in the EU/EEA and UK, and
 - b) advised that the OAIC may engage with TikTok further to understand the use of the Pixel tool by online health services providers.

Recent developments

- 16 June 2023 - OAIC staff, as part of engagement with the Digital Platform Regulators Forum (**DP-REG**) Digital Technology Working Group, attended a virtual tour of TikTok's 'Transparency and Accountability Centre'.
- The tour was arranged in response to an invitation from TikTok and was also attended by ACCC, ACMA, Office of the eSafety Commissioner staff.
- As part of our regulatory toolkit, the OAIC gathers evidence and information from a range of sources – this may include briefings from digital platforms on new products or initiatives that raise privacy considerations.
- On 4 November 2024, the OAIC published guidance about organisations' privacy obligations in relation to their use of tracking pixels where it results in the collection, use or disclosure of personal information.

Background: public matters only**Expected next steps/dates**

- The OAIC is considering issues around the use of tracking pixels by health service providers that may collect sensitive health information via their websites.

Issues of note for OAIC

- In April 2023 the UK Information Commissioners Office fined TikTok £12.7m for breaches of the GDPR between May 2018 and July 2020 largely in relation to the handling of children's data.
- In September 2023 the Irish Data Protection Commission fined TikTok €345m (\$570m AUD) for several infringements of the GDPR following an examination of how TikTok processed children's data between 31 July and 31 December 2020.
- In December 2023, there were reports in the media that the TikTok pixel transmits information to TikTok before a user has clicked 'I agree' or 'I consent', while Meta and Google pixels waited for consent.

ESTIMATES BRIEF: MATTER

**Respondent name: Master Wealth Control Pty Ltd t/as DG Institute;
Property Lovers Pty Ltd (entities operated / controlled by
Dominique Grubisa)**

Type: Determinations

Key details			
When did OAIC learn of matter?	July 2020		
How was OAIC advised/origin?	Tip-off by member of the public		
Date action commenced	19 May 2023		
Age of matter in days	Approx 500 days (now finalised)		
Jurisdiction	APPs		
Related representative action?	No		
Responsible Branch & team	Dispute Resolution, CII and Determination Teams		
Content author	Wynn Le, Natalie Le, Emily Lyons	Phone	02 9942 4221
Clearance by	Andre Castaldi	Phone	02 9942 4124
Brief current at	22 November 2024		

Brief description of matter

- Master Wealth Control Pty Ltd t/a DG Institute and Property Lovers Pty Ltd are two companies that are associated with Ms Dominique Grubisa (**the Entities**).
- The Entities provide similar training courses and services to members of the public which focus on property investment, wealth management and asset protection. Courses are provided via live seminars and online broadcasts, supplemented with documentary guidance and instruction.
- Subscribers of the course titled 'Elite Mentoring Program' receive weekly 'on and off-market leads lists' which comprise a spreadsheet providing details of properties owned by individuals who have appeared in court listings for various reasons including bankruptcy, divorce, deceased estate, mortgagee repossession and company liquidations. Participation in this program costs between \$25,000 and \$30,000 per person per year.
- The Entities obtain the personal information of individuals from court listings without their knowledge or consent; this information is then

compiled with data obtained from online property data brokers to generate the lists.

- Properties appearing on the lists are described as ‘distressed properties’ that can be targeted by subscribers of the Entities’ courses to seek below market value property sales.

Current action

- 19 May 2023 - investigations commenced under section 40(2).
- June 2024 – the investigations were finalised and files progressed to determination.
- 4 October 2024 – preliminary views were sent to the Entities.
- 18 November 2024 – Privacy Commissioner made her determination in relation to Master Wealth, finding breaches of APP 3.5, APP 5.1, APP 10.2 and APP 1.3.
- 22 November 2024 – Privacy Commissioner made her determination in relation to Property Lovers in substantively similar terms.

Expected next steps/dates

- Determinations to be published 26 November 2024.

Background: public matters only
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Activities by other regulators:

- Following proceedings commenced by the ACCC, on 9 April 2024 the Federal Court found that Master Wealth Control Pty Ltd had contravened the Australian Consumer Law, and that its sole director Dominique Grubisa was knowingly concerned in the contraventions.
- A hearing on relief orders sought by the ACCC will be held at a later date. The ACCC is seeking civil penalties, injunctions, consumer redress, costs and an order against Ms Grubisa disqualifying her from managing corporations.
- The Victorian Legal Services Board and Commissioner advises Ms Grubisa no longer holds a practicing certificate and is prohibited from advertising, representing or implying she is entitled to engage in legal practice (June 2022).

ESTIMATES BRIEF

Representative complaints

Legislative framework

- Pursuant to ss 36(2) and 38 of the *Privacy Act 1988* (Cth) (**Privacy Act**) an individual may make a complaint to the Commissioner regarding an act or practice that may be an interference with the privacy of two or more individuals. These are known as representative complaints.
- If it is validly made, the Commissioner must investigate a representative complaint (s 40). This requirement is subject to s 41, which permits the Commissioner to decide not to investigate, or not to investigate further, the subject matter of a complaint if satisfied that specified circumstances exist.

s 47E(d)

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Medibank

Representative complaint

- Date lodged – 18 November 2022
- Date accepted – 30 March 2023
- Lawyers – Maruice Blackburn, Centennial Lawyers and Bannister Law.
- Scope – Breaches of APP 11 as a consequence of the data breach.
- Current status – The OAIC is continuing its investigation and considering a request made by the complainant.

Individual complaints

- The OAIC has received around 110 individual complaints related to this matter all of which raise allegations of APP11. There are also a smaller number that raise APP3 and APP12 allegations.

Class action

- Class action is *Zoe Lee McClure v Medibank Private Limited* (ACN 080 890 259), Federal Court reference VID64/2023.

- Filed 06 February 2023 and is ongoing with the latest procedure being an interlocutory hearing that was listed for 03 June 2024.

Litigation

- On 22 February 2024, Medibank's s 39B application was dismissed. This was an application to restrain the Commissioner (on a final and interlocutory basis) from making a determination and enforcing the determination in respect of the representative complaint and CII.
- The litigation against Medibank is in the pleadings phase. On 5 June 2024, AIC filed civil penalty proceedings against Medibank. Medibank filed a defence on 26 September 2024.
- A confidentiality protocol is in effect in this proceeding, and the unredacted versions of the pleadings documents are the subject of suppression orders.
- The next step of the litigation is for the AIC to file a reply. This is due 18 October 2024.

Optus 1

Representative complaint

- Date lodged – 31 October 2019
- Date accepted – 26 July 2021
- Lawyers – Maurice Blackburn
- Scope – Breaches of APPs 6 and 11
- Current status – The OAIC engaging with the respondent and complainant regarding documents to be provided to the complainant.

Individual complaints

- The OAIC has received 2 individual complaints which have open investigations in relation to APPs 6 and 11

Class action

- N/A

Litigation

- N/A

Optus 2

Representative complaint

Note there are two complaints on foot related to the Optus 2022 Data Breach, one complainant is represented by Johnson Winter Slattery and the other by Maurice Blackburn.

- Date(s) lodged – 04 October 2022 (JWS), 24 April 2023 (MB)
- Date(s) accepted – 25 August 2023 (JWS), MB complaint not formally accepted yet
- Lawyers – Johnson Winter Slattery and Maurice Blackburn
- Scope – APP 11
- Current status – Legal is currently considering submissions from parties related to an application from Optus.

Individual complaints

- The OAIC has received 45 individual complaints which raise allegations in relation to APP 11 with a smaller number of APP 6 allegations

Class action

- Commenced 21 April 2023 in the Federal Court against a number of entities in the Optus group by Slater & Gordon.

Litigation

- The AIC accepted the representative complaint that was lodged first in time by Johnson Winter Slattery as being validly made. Having regard to ss 36-39 of the *Privacy Act 1988* (Cth), the AIC declined to accept the representative complaint that was lodged second in time by Maurice Blackburn Lawyers as being validly made. (*Foley v Australian Information Commissioner* (VID735/2023)).

Latitude

Representative complaint

- Date lodged – 29 March 2023
- Date accepted – 14 May 2024
- Lawyers – Gordon Legal
- Scope – APP 11

- Current status - Opt out notice to be prepared in conjunction with Legal. Considerations for appropriateness of conciliation following opt out process.

Individual complaints

- OAIC has received 278 individual complaints that raise allegations in relation to APP 11. A smaller number of complaints also raise allegations in relation to APPs 3, 6 and 12

Class action

- N/A

Litigation

- N/A

Dymocks

Representative complaint

- Date lodged – 25 September 2023
- Date accepted – 28 May 2023
- Lawyers – Gordon Legal
- Scope – APP 11
- Current status - Opt out notice published on 19 November 2024.

Individual complaints

- The OAIC has received three individual complaints all of which relate to allegation of APP 11
- The OAIC is in the process of writing to the individual complainants to advise of the impact of the representative complaint on their individual matters
- Preliminary inquiries to be undertaken by Regulatory Action once opt out process is completed

Class action

- N/A

Litigation

- N/A

DVA

Representative complaint

- Date lodged – 18 December 2023
- Date accepted – 19 February 2024
- Lawyers – Gordon Legal
- Scope – APPs 3, 5 and 6
- Current status - Draft opt out notice with DVA for consultation.

Individual complaints

There are 48 privacy complaints relating to the DVA Mates program that allege breaches of APP 3, APP 5, APP 6 and APP 11.

Class action

- N/A

Litigation

- N/A

s 47E(d)



s 47E(d)



s 47E(d)



Class action

- N/A

Litigation

- N/A

s 47E(d)



Class action

- N/A

Litigation

- N/A

s 47E(d)



s 47E(d)

Class action

- N/A

Litigation

- N/A

HWL Ebsworth

s 47E(d), s 47F

Representative complaint

- Date(s) lodged – 6 June 2024 (NJP), 24 June 2024 (Mr Knowles)
- Date accepted – Not yet accepted.
- Lawyers – N/A
- Scope – APP 11 and APP 6
- Current status - Legal advised on validity of complaints 19 November 2024. Acceptance to be notified to all parties.

Individual complaints

- The OAIC has received 25 individual complaints that raise allegations in relation to APPs 6, 11 and 12

Class action

- N/A

Litigation

- N/A

Update 'Current at' date below following each update	Cleared by: Andre Castaldi	Action officer: David Moore and Rachel Mathison
Current at: 25 November2024	Phone number: 02 9942 9412	Action officer number: 02 9942 4131 and 02 9246 0443

ESTIMATES BRIEF: MATTER**Respondent name: Australian Federal Police (AFP)****Type:** preliminary inquiries

Key details			
When did OAIC learn of matter?	October 2023 (PIMEyes), 25 January 2024 (AFP Clearview allegation)		
How was OAIC advised/origin?	Media, senate estimates hearings		
Date action commenced	12 Feb 2024: prelim inquiries to PIMEyes; Prelim inquiries to AFP Clearview.		
Date actions ceased	24 Sept 2024 (PIMEyes) 10 Oct 2024 (AFP Clearview)		
Age of matter in days	225 days (PIMEyes) 241 days (AFP Clearview)		
Jurisdiction	APPs, Privacy (Australian Government Agencies – Governance) APP Code 2017		
Related representative action?	no		
Responsible Branch & team	Dispute Resolution, Commissioner Initiated Investigations team		
Content author	Natalie Le	Phone	02 9942 4158
Clearance by	Andre Castaldi	Phone	02 9942 4124
Brief current at	10 October 2024		

Brief description of matter**AFP/Clearview**

- On 12 February 2024, the OAIC made preliminary inquiries with the AFP following a [media report](#) published on crikey.com.au which alleged that the AFP was utilising facial recognition technology services provided by Clearview AI via its participation in global victim identification taskforce led by the United States' Homeland Security Investigations.
- The allegation that AFP was accessing the services of Clearview AI raised concerns that it was not compliant with the Information Commissioner's determination made on 26 November 2021 ([Commissioner-Initiated-Investigation-into-the-Australian-Federal-Police-Privacy-2021-AICmr-74-26-November-2021-002.pdf \(oaic.gov.au\)](#)) which found AFP interfered with the

privacy of individuals through its use of Clearview AI's facial recognition technology tools by:

- Failing to conduct a privacy impact assessment (**PIA**) for a high privacy risk project in breach of clause 12 of the *Privacy (Australian Government Agencies – Governance) APP Code 2017* (the **Code**)
- Failing to comply its obligations under with APP 1.2 to take reasonable steps to implement practices, procedures and systems to ensure compliance with clause 12 of the Code.

PIMEyes

- 12 February 2024: the OAIC commenced preliminary inquiries into Carribex Ltd t/a PIMEyes, an online face search engine that goes through the internet to find pictures containing given faces.
- The company provides its services both free and for a fee internationally including Australia. The website is owned by EMEA Robotics, a corporation based in Dubai. The owner and CEO of EMEA Robotics and PimEyes is Giorgi Gobronidze who is based in Tbilisi, Georgia.
- PIMEyes was brought to the attention of OAIC during senate estimates hearings in October 2023 when questions were asked of AFP and Australian Border Force about their awareness and use of the PIMEyes search platform.

Current action

AFP

- 1 March 2024: The AFP provided its response to the OAIC's preliminary inquiries.
- OAIC Engaged with AFP regarding its response to the preliminary inquiries and approach to compliance with the Code
- 10 October 2024 - OAIC issued a letter to the AFP, including guidance around the conduct of Privacy Impact Assessments to ensure privacy controls are current and working well, and to identify better practice if required.
- 10 October 2024 - OAIC closed inquiries.

PIMEyes

- 21 March 2024: PIMEyes provided its response to OAIC's preliminary inquiries.

- 24 September 2024: OAIC closed inquiries following assessment and review of PIMEyes' response to preliminary inquiries.

Background: public matters only

Issues of note for OAIC

- The Baden-Württemberg data protection authority ('LfDI Baden-Württemberg') announced, on 21 December 2022, that it had initiated proceedings against PimEyes due to an apparent lack of compliance with data protection legislation. (<https://www.dataguidance.com/news/baden-w%C3%BCrttemberg-lfdi-baden-w%C3%BCrttemberg-initiates-0>)
- November 2022: UK ICO advised parliament that it was considering whether PIMEyes' practices may raise data protection concerns.

ESTIMATES BRIEF: OTHER

Subject: NDB Scheme

Type: Report

Key details			
Jurisdiction	Part IIIC of Privacy Act (NDB Scheme)		
Responsible Branch & team	Dispute Resolution, NDB Team		
Content author	Natalie Le	Phone	02 9942 4158
Clearance by	Andre Castaldi	Phone	02 9942 4124
Brief current at	21 November 2024		

Brief overview of NDB statistics

- In the 23-24 FY we received 1,001 NDBs, a 12% increase from the previous financial year
 - Malicious or criminal attack has consistently remained the leading source of data breaches.
 - 41% of data breaches were cyber incidents
 - Australian Government reported 101 NDBs, rank 3 in top 10 industries
- In the FY to 31 October, we received 426 NDBs, a 45% increase from the comparable period in the previous year
 - 42% of data breaches were cyber incidents
 - The health and Australian government sectors were the highest reporting sectors in the July to October 2024 period.
- The KPI at 31 October 2024, was 84%
- 95% of cases on hand have been received within the last 4 months.

Large scale data breaches

- In the 23-24 FY, we received:
 - 63 data breaches impacting more than 5,000 individuals
 - 3 data breaches impacted more than 1 million individuals (Quantum Radiology, Dymocks and MediSecure)
- In the FY to 31 October, we have received 16 data breaches impacting more than 5,000 individuals.

Recent large scale data breach incidents reported in the media:

- MediSecure – closed with media statement on 13 September 2024:
 - MediSecure entered administration on 3 June 2024
 - Inquiries made of MediSecure to ensure compliance with the NDB scheme, focussing on ensuring that MediSecure notified individuals impacted by this breach
 - 18 July 2024 - MediSecure issued a public statement on the data breach; the statement was broadly compliant with the NDB scheme requirements, however did not include contact details for the entity due to its operating status
 - 18 July 2024 - the Australian Government also updated its advice for individuals whose personal information may have been compromised
 - The OAIC did not pursue further regulatory action. As MediSecure entered administration, the possible remedies that we could obtain for the community will not be proportionate to the resources required for a comprehensive investigation

- Outabox (impacting NSW Clubs)
 - OAIC notified of the incident by Outabox and various clubs impacted
 - The OAIC is currently assessing Clubs' compliance with the NDB scheme.

ESTIMATES BRIEF: REGULATORY PRIORITY

Subject: Assessments Program

Key details			
Jurisdiction (main regimes)	<i>Privacy Act 1988</i> <i>Competition and Consumer Act 2010</i> Digital ID Act (from 1 December 2024)		
Responsible Branch & team	Assessments team, Regulatory Action		
Content author	Heath Baker	Phone	(02) 9942 4054
Clearance by	Rob Ghali	Phone	(02) 9942 4201
Brief current at	31 October 2024		

Brief description of matter

- The OAIC has a program of privacy assessments (audits) to assess entities' handling of personal information and consumer data right (CDR) data.
- Recommendations are made to address identified risks and non-compliance.
- For significant issues, the OAIC may take further regulatory action or refer matters to other regulators (as appropriate).

Current assessments

- At 31 October 2024, 5 assessments were open:

Topic	Commenced	Participants
Digital ID: openness and transparency	FY 2023/24	1 government agency (Australian Taxation Office)
CDR outsourcing arrangements	FY 2023/24	2 accredited data recipients
Identity Verification Services	FY 2024/25	1 government agency (Attorney General's Department)
CDR data quality	FY 2024/25	1 data holder
National Health Act data matching	FY 2024/25	1 government agency (Department of Health)

Completed assessments

- At 31 October 2024, 3 assessments have been closed in the FY 2024-25:

Topic	Commenced	Participants
My Health Record: 'my health' app	FY 2023/24	Australian Digital Health Agency
CDR policies	FY 2023/24	AGL Energy Group EnergyAustralia Group Origin Energy Group
Digital ID: MyGovID destruction of biometric information	FY 2023/24	Australian Taxation Office

- In FY 2023-24:
 - 5 assessments were closed
 - involving a total of 340 targets.

Topic	Commenced	Participants
Data Breach Response Plans	FY 2022/23	7 ACT Government Directorates
CDR consents and authorisations	FY 2022/23	3 accredited data recipients 3 data holders
CDR policies	FY 2022/23	19 accredited data recipients
Privacy Training	FY 2023/24	8 ACT Government Directorates
My Health Record: emergency access	FY 2023/24	150 general practice clinics 150 retail pharmacies

Background: public matters only**Key facts**

- The Commissioner has powers to conduct assessments, audits, compliance monitoring and inspections under various legislation including the Privacy Act (s 33C) and Competition and Consumer Act (s 56ER).
- At 31 October 2024, the assessment team had 12 staff (10.6 FTE—1 x EL2, 7.2 x EL1, 2.4 x APS6).
- Assessment forward plans are risk-based and informed by the regulatory priorities and policies, funding and Letter of Exchange obligations, and intelligence from the media, stakeholders, co-regulators and OAIC data.
- Most assessments are specifically funded, for example:
 - Passenger name record assessments are funded under an agreement
 - CDR, digital health, health data matching and Digital ID assessments are funded by direct appropriation
- The 2022 Privacy Act amendment gave the Information Commissioner the power to compel information or documents for assessments. There is a similar (but limited) power in the CDR Rules. To date, we have not used these powers.

ESTIMATES BRIEF: OTHER**Subject: Consumer Data Right****Type:** Report

Key details			
When did OAIC learn of matter?	Ongoing multi-agency program		
Origin	Government initiative		
Is there an issue in the public domain?	Media coverage of CDR consumer uptake		
Jurisdiction	Consumer Data Right		
Responsible Branch & team	Regulation and Strategy Branch, all CDR teams (CDR Policy, Operations & Assessments)		
Content author	Alicia Stewart	Phone	s 47F
Clearance by	Sarah Croxall	Phone	s 47F
Brief current at	19 November 2024		

Brief overview of other regime

- The Consumer Data Right (CDR) is an economy wide reform designed to enable consumers to share their data to compare and/or access products and services.
- The OAIC's functions include providing advice to the Minister and CDR agencies (Treasury, the ACCC, and Data Standards Body) on the privacy and confidentiality of consumers' information in the CDR system, publishing guidance for CDR participants, handling complaints from CDR consumers and enforcing the Privacy Safeguards and related CDR Rules.

Current action

- The OAIC's work program aligns with the priority areas for the future of CDR outlined by the Assistant Treasurer in his address to the Committee for Economic Development of Australia (CEDA) on 9 August. This includes:
 - Preparing changes to OAIC guidance following CDR rules amendments for consent and operational enhancements being made.
 - Engaging with Treasury on the expansion to non-bank lending expansion, and updating guidance for this new sector once rules are made.

- Working with Treasury and the DSB on high value use cases, and how rules and standards can better support these.
- Engaging with Treasury on the move towards prohibiting screen scraping.

Recent developments

- The *Treasury Laws Amendment (Consumer Data Right) Act 2024* passed Parliament on 26 August and establishes action initiation reforms that will enable CDR consumers to direct actions to be taken on their behalf such as making a payment or opening/closing an account. These legislative reforms have not been activated by the Government.
- The Assistant Treasurer [addressed](#) the Committee for Economic Development of Australia (CEDA) on 9 August about the Government's plans for the future direction of the CDR. The key message was that the Government will reset the CDR by focusing on delivering better consumer outcomes, including by reducing the cost of compliance, increasing industry uptake and ensuring safety for consumers.
- The OAIC published CDR Assessment No. 5 (CDR policies of 19 accredited persons in the banking sector) on 26 June and CDR Assessment No. 6 (CDR Policies of the 3 initial data holders in the energy sector) on 6 September.
- Treasury recently completed public consultation on proposed amendments to CDR Rules relating to consent and operational enhancements. OAIC made a submission on 11 September, which will be published by Treasury, alongside other submissions, in due course.

Expected next steps/dates

- The OAIC has an ongoing program of targeted, risk-based CDR assessments. Details of the OAIC's overall Assessments program are in [D2024/025010](#).

Background: public matters only
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Issues of note for OAIC

- To date, the OAIC has completed 6 CDR assessments:

Topic	No. of assessments	Participants	No. of recommendations¹
Open and transparent CDR data handling	5	14 data holders 26 accredited persons	261
Consents and authorisations	1	3 data holders 3 accredited persons	7

- The following assessments are underway or planned for 2024/25FY

Topic	Status	Participants
CDR outsourcing arrangements	Commenced	2 accredited data recipients
CDR data quality	Commenced	1 data holder
Screen scraping	Planning	TBC
Privacy safeguard 1 – CDR data handling	Planning	TBC
CDR data security response plans	Not yet commenced	TBC

- The OAIC manages all CDR complaints and operates the primary complaints portal (on the CDR.gov.au website). In the period 10 December 2020 to 31 October 2024, we received 698 contacts via the Online Complaint Tool – 346 for the ACCC, 352 for the OAIC. For more information see page 31 of the Key Statistics brief [D2024/025290](#).

¹ Recommendations are made to address non-compliance, and medium and high privacy risks.

ESTIMATES BRIEF: OTHER

Subject: Credit reporting – Variation to the CR Code, soft enquiries framework and review of Part IIIA of the Privacy Act

Type: Report

Key details			
When did OAIC learn of matter?	N/A		
Origin	OAIC identified		
Is there an issue in the public domain?	<p>The OAIC has approved an application to vary the CR Code and issued a media release on 1 October 2024.</p> <p>The review of Part IIIA of the Privacy Act has concluded with the report provided to the Ministers on 1 October 2024. The OAIC provided a submission to the review which is publicly available.</p>		
Jurisdiction	Part IIIA of the Privacy Act		
Responsible Branch & team	Regulation and Strategy, Systems and Security Team		
Content author	Fiona Annetts	Phone	S 47F
Clearance by	Sarah Ghali	Phone	
Brief current at	8 October 2024		

Application to vary the <i>Privacy (Credit Reporting) Code 2014 (CR Code)</i>
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- On 19 December 2023, the OAIC received an application from the Australian Retail Credit Association (Arca) to vary the CR Code. The application was developed to give effect to proposals from the OAIC’s 2021 independent review of the CR Code (the 2021 Review).¹
- The Privacy Commissioner approved the application on 1 October 2024 and the new Privacy (Credit Reporting) Code 2024 commenced operation on 1 October 2024.²
- The OAIC has advised the code developer, Arca of the approval and has socialised the new CR Code via a media release and on LinkedIn and X.

¹ A review is required every 4 years under paragraph 24.3 of the CR Code to ensure that the Code remains fit for purpose.

²² [Privacy codes register | OAIC](#)

Soft enquiries framework

- One of the proposals from the OAIC's 2021 review of the CR Code recommended that the Code be amended to introduce a soft enquiries framework into Australia.
- A soft enquiry allows a credit provider (CP) to review some of the information in an individual's credit report. It is not listed in the individual's credit report or impact their credit score. It allows CPs to assess whether an individual may be eligible for credit prior to an official application. Individuals benefit from being able to 'shop around' with different CPs and make informed decisions about loan products.
- In response to stakeholder feedback, on 30 August 2024, the OAIC decided to postpone consideration of a soft enquiries framework through the CR Code until the report for the review of Australia's credit reporting framework is released and considered.
- This will allow the matter to be examined alongside the broader credit reporting landscape, and ensure issues raised are explored holistically alongside options to enhance the legal framework.
- The OAIC will revisit the matter of introducing a soft enquiries framework via the CR code in Q2 2025.

Review of Australia's credit reporting framework (Part IIIA Review)

- Part IIIA of the Privacy Act includes a statutory requirement to review the provisions, with a report due the Attorney-General before 1 October 2024 (see s 25B of the Privacy Act). A review of the corresponding credit reporting provisions in the *National Consumer Credit Protection Act 2009* is also required.
- The Attorney-General and Assistant Treasurer announced on 27 February 2024 that the reviews had commenced and would be considered by independent reviewer, Ms Heidi Richards (the Review).
- The OAIC made a submission to the Review and has engaged extensively with AGD and the independent reviewer.
- The final report for the Review was provided to the Attorney-General and Treasurer on 1 October 2024. It must be tabled within 15 sitting days at which point it will be publicly available. Once released, the OAIC will consider the report and work with Government on any recommendations concerning the OAIC and its role.
- While we have not yet seen the final report for the review of Australia's credit reporting framework, it will likely contain issues and recommendations that will impact the OAIC's role as regulator.

ESTIMATES BRIEF: OTHER (REGIME)**Subject: Digital Identity****Type:** New scheme – implementation project

Key details			
When did OAIC learn of matter?	Ongoing area of policy development		
Origin	Government initiative and related Act		
Is there an issue in the public domain?	Media coverage of new scheme		
Jurisdiction	Digital ID Act 2024 / general privacy		
Responsible Branch & team	Digital ID and implementation team		
Content author	Galina Druc	Phone	(02)99424150
Clearance by	Annan Boag	Phone	s 47F
Brief current at	8 October 2024		

Brief overview of Regime

- The Government has legislated a Digital ID scheme to provide individuals with secure, convenient, voluntary and inclusive ways to verify their identity for use in online transactions with government and businesses.
- The Information Commissioner will regulate the privacy aspects of the Digital ID scheme. The ACCC (initial Digital ID Regulator) is responsible for accreditation and approving entities to participate in the scheme.
- The Act includes additional privacy safeguards (enforceable by the OAIC) that apply in the scheme in addition to existing privacy obligations.
- The OAIC is supportive of the legislative framework for Digital ID and the intention for the scheme to reduce the amount of personal information that needs to be shared across the economy.

Current action

- The OAIC has stood up an implementation taskforce to prepare the OAIC for its Digital ID privacy regulator role. The taskforce's key activities include stakeholder engagement (including with government agencies), privacy advice to government agencies, developing guidance and education materials, developing a regulatory strategy, updating systems and processes for the OAIC's expanded complaint-handling and NDB jurisdiction, and upskilling staff across relevant functions.
- The timeframe for the implementation project was initially extended to 12 September 2024 (from 30 June) in line with the expected later

commencement of legislation, however the project will continue until the OAIC transitions to its new structure in or around November 2024.

- The OAIC is participating in program governance forums, including the Digital ID steering committee and the program planning group.

Recent developments

- The Digital ID Bill 2024 and Digital ID (Transitional and Consequential Provisions) Bill 2023 were passed by both Houses of Parliament on 16 May 2024. The legislation must commence within 6 months of Royal Assent (or earlier by Proclamation).
- The Department of Finance is progressing the development of various rules and data standards in consultation with stakeholders and the OAIC is providing privacy advice on these draft instruments.
- The May 2024 Budget provided funding of \$5.6M for the OAIC's Digital ID activities for the 2024-25 financial year. Continuing funding is expected to be considered by Government in the MYEFO 2024-25 or May 2025 Budget.

Expected next steps/dates

- The OAIC will continue its regulatory preparedness activities until the commencement of the legislation.
- The legislation is expected to commence on 1 December 2024.

Background: public matters only

- In MYEFO 2023-24, the Government announced \$145.5 million over four years, and \$17 million per year ongoing, to support the next stages of the Digital ID program and related identity security initiatives, including:
 - \$67 million over three years from 2023-24 for the ACCC to perform regulatory functions under the Digital ID legislation; and
 - \$1.4 million in 2023-24 for the OAIC to prepare for its expanded oversight role under the Digital ID and Identity Verification Services legislation. This supported the creation of the Digital Identity implementation team.
- The Digital ID Act sets out 13 additional privacy safeguards, intended to strengthen protection for personal information used in Digital ID services. These are civil penalty provisions and range in topic from:
 - restrictions on collection, use or disclosure of certain attributes which have a higher level of sensitivity
 - requirements to deactivate a digital ID at the request of the individual

- requirements for express consent to share certain personal information with relying parties
- restrictions on use and retention of biometric information
- prohibitions on use of personal information for personal data profiling and direct marketing purposes
- prohibition on one-to-many biometric matching.

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ESTIMATES BRIEF: OTHER**Subject: My Health Record****Type: Report**

Key details			
When did OAIC learn of the matter?	The OAIC is the independent privacy regulator for the My Health Record system and the Healthcare Identifiers Service		
Origin	The OAIC has performed this role since the My Health Record system commenced in 2012		
Is there an issue in the public domain?	N/A		
Jurisdiction	Privacy/My Health Record		
Responsible Branch & team	Health and Government, Regulation and Strategy		
Content author	Emily McPhee	Phone	02 9942 4063
Clearance by	Sarah Ghali	Phone	02 9942 4208
Brief current at	22 November 2024		

Brief overview of the OAIC's regulatory role

- Pursuant to the *My Health Records Act 2012* (Cth) and corresponding funding arrangements, the OAIC regulates the privacy aspects of the My Health Record (MHR) system and carries out a number of related activities, including:
 - responding to enquiries and complaints
 - handling data breach notifications
 - providing privacy advice, and
 - conducting privacy assessments.
- The OAIC's MHR regulatory role is currently being funded through a terminating measure announced in the 2023-24 Federal Budget covering the 2023-24 and 2024-25 financial years. It has previously been funded under other terminating measures, and by way of Memoranda of Understanding arrangements with the Australian Digital Health Agency (ADHA).

Enquiries and complaints

- This financial year, the OAIC has received 2 privacy complaints and 7 enquiries relating to the MHR system, as of 31 October 2024. The 2024-25 financial year, so far, reflects a 33% decrease in complaint numbers, and a 40% increase in enquiries compared to the same period last year.

Notifiable Data Breaches

- In 2024-25 to 31 October, the OAIC has received 9 MHR data breach notifications. So far, these figures reflect a 57% decrease in mandatory data breach notifications compared to the same period last year.

Assessments and other regulatory activity

- In 2023-24, the OAIC finalised two assessments, one examining the *myhealth* mobile application and another concerning the governance of the MHR emergency access function in certain healthcare sectors. These were published on 3 September and 24 June 2024 respectively.
- The OAIC is currently scoping a further assessment which will relate to private hospitals and their handling of MHR data.

Guidance and education

- On 10 October 2023, the OAIC published a new My Health Records data breach notification page along with minor updates to the Guidelines for reporting a data breach under the My Health Records Act. The page contains a new My Health Record Notifiable Data Breach form.
- On 3 April 2024, the OAIC was part of an ADHA podcast alongside health professionals on the topic of MHR security and access policies and why healthcare provider organisations are required to have one to be able to use the MHR system.
- The OAIC has continuing engagement with the Department of Health and Aged Care on a range of MHR policy matters including:
 - the design of the My Health Record Research and Public Health scheme
 - the Modernising My Health Record Share by Default project, and
 - the Healthcare Identifiers Framework Project Consultation.

ESTIMATES BRIEF: OTHER

Subject: Privacy Law Reform

Type: Report and Bill

Key details			
When did OAIC learn of matter?	The Privacy Act Review was formally launched in October 2020, however the OAIC commenced work earlier after the ACCC's <i>Digital Platforms Inquiry</i> recommended broad reform of the Act.		
Origin	Government process		
Is there an issue in the public domain?	Privacy and Other Legislation Amendment Bill 2024 and the Privacy Act Review Report		
Jurisdiction	General privacy		
Responsible Branch & team	Law Reform & Digital Platforms		
Content author	Rebecca Brown	Phone	02 9942 4117
Clearance by	Sarah Ghali	Phone	02 9942 4208
Brief current at	20 November 2024		

Brief overview of issue

- On 12 September, the Privacy and Other Legislation Amendment Bill 2024 (the Bill) was introduced to the House of Representatives.
- The Bill would enact a first tranche of reforms and includes 'agreed' proposals in the *Government Response to the Privacy Act Review Report*:
 - development of a Children's Online Privacy Code, supported by an additional \$3 million over three years to the OAIC to develop the Code
 - greater transparency for individuals regarding automated decisions that affect them; and
 - stronger enforcement powers for the OAIC with new civil penalty provisions and expanded powers.
- The Bill would also introduce a new statutory tort for serious invasions of privacy and targeted criminal offences to respond to doxing.
- The A-G's second reading speech indicated that over the coming months, AGD will develop the next tranche of privacy reform for targeted consultation, including draft provisions.

Current action

- The OAIC made a submission to the Legal and Constitutional Affairs Legislation Committee's inquiry into the Bill supporting the Bill and calling for amendments to the definition of personal information and introduction of a fair and reasonable test to be considered as a matter of urgency.
- The Committee published its report on 14 November 2024 recommending the Bill be passed subject to some recommended amendments to certain provisions.

Recent developments

Privacy Act Review Report:

- The final Privacy Act Review Report was released in February 2023.
- The OAIC provided two submissions in response to the Issues Paper and Discussion Paper that influenced the proposals in the final PAR report.

Government Response:

- The Government Response to the Privacy Act Review Report was released in September 2023.
- Of the 116 proposals for reform, the Government 'agreed' to 38 proposals, 'agreed in-principle' to 68 proposals and 'noted' 10 proposals. The proposals agreed in-principle were subject to further engagement with entities and a comprehensive impact analysis.

Legal and Constitutional Affairs Legislation Committee

- The Senate referred the Bill to the Legal and Constitutional Affairs Legislation Committee for inquiry and report.
- The Committee reported on 14 November 2024 and among other things, recommended:
 - That the minimum consultation period for the Children's Code be extended to 60 days and that the OAIC be required to consult with relevant industry bodies;
 - That the IC be empowered to issue a discretionary notice to an entity to remedy a breach before issuing infringement notices;
 - That the Explanatory Memorandum be amended to make clear that entities are not expected to compromise commercial-in-confidence information about automated decision-making systems in their privacy policies;
 - Several proposed amendments to the statutory tort; and

- Subject to the preceding (and other) recommendations, that the Senate pass the Bill

Expected next steps/dates

- Upon passage of the Bill, the OAIC will commence a program of work to ensure that it is ready to utilise the new powers efficiently, effectively and in manner which is evidence-based and proportionate.
- A dedicated team will also commence work to develop the Children's Code to ensure that it is in place within the legislated timeframe of within 2 years from commencement. As the Code developer, the OAIC will be responsible for developing, drafting and registering the code and intends to consult broadly with children, parents, child development experts, child welfare advocates, industry and Government.
- The timing of the passage of the Bill is otherwise subject to the parliamentary process.

Background: public matters only

Issues of note for OAIC

- A number of stakeholders have criticised the Bill as being 'timid' or 'unambitious', including some academics, digital rights and civil society groups.
- Stakeholders have argued that the Bill leaves out the most fundamental reforms proposed in the Privacy Act Review Report, including the proposed 'fair and reasonable' test, amendments to the definition of personal information, removal of the small business exemption (which has been estimated to cover approximately 95% of Australian businesses), among other reforms.
- The A-G has indicated that the Government will approach the second tranche of reforms 'carefully' through additional targeted consultation, 'to ensure increased privacy protections are balanced alongside other impacts.'

ESTIMATES BRIEF: OTHER

Subject: Digital Platform Regulators Forum

Type: Collaborative forum

Key details			
When did OAIC learn of matter?	DP-REG was established March 2022		
Origin	OAIC part of establishment		
Is there an issue in the public domain?	Public submissions		
Jurisdiction	Privacy – digital platforms		
Responsible Branch & team	Regulation & Strategy – Law Reform and Digital Platforms		
Content author	Rebecca Brown	Phone	02 9942 4117
Clearance by	Sarah Ghali	Phone	02 9942 4208
Brief current at	4 October 2024		

Brief overview of other (Collaborative forum)

- Through DP-REG, members share information about, and collaborate on, cross-cutting issues and activities involving the regulation of digital platforms. This includes consideration of how competition, consumer protection, privacy, online safety and data issues intersect.
- DP-REG’s strategic priorities for 2024-26 are:
 - Increase members; digital platforms regulatory capability
 - Increase information/intelligence sharing capability
 - Collaborate on regulatory development
 - Proactive engagement
 - Understanding, assessing and responding to the benefits, risks and harms of technology, including AI models
- DP-REG has established three working groups to progress its strategic priorities. Each working group has representatives from the four participating regulators:
 - Skills and Research Working Group – Supports the collection and sharing of relevant skills, data, research and information across members (chaired by ACMA)
 - Digital Technology Working Group – Jointly explores relevant digital platform technologies and their regulatory implications (chaired by ACCC); and

- Codes and Regulation Working Group – Promote a consistent and coordinated approach to regulatory frameworks and common regulatory issues, and build regulatory capability across DP-REG members (chaired by OAIC).

Current action

- The OAIC is continuing to engage in the three working groups
- The OAIC Chairs the Codes & Regulation working group

Recent developments

- In May 2024 DP-REG members made a [joint submission](#) to the Senate Select Committee on Adopting Artificial Intelligence (published 9 May 2024).
- In June 2024 DP-REG members made a [joint submission](#) to the Joint Select Committee on Social Media and Australian Society (published 5 July 2024).
- On 25 July 2024, DP-REG members published a [communique](#) about DP-REG's goals and strategic priorities, and the publication of its [yearly wrap up](#) for 2023-24.
- On 19 August 2024, DP-REG members published [Working Paper 3: Examination of technology – multimodal foundation models](#)
- On 4 October 2024, DP-REG members made a joint submission to the Department of Industry, Science and Resources (DISR) on the *Proposals paper for introducing mandatory guardrails for AI in high-risk settings*.

Background: public matters only

- DP-REG's joint submissions have largely provided information about the work of DP-REG and how it promotes a streamlined and cohesive approach to the regulation of digital platforms in Australia.
- DP-REG's joint submission to DISR's consultation on its proposals paper for mandatory guardrails for high-risk AI commented on options to mandate guardrails, preferring a framework approach (option 2) and noting several important aspects, including regulatory coordination between regulators.

Issues of note for OAIC

- There have been ongoing calls for clarity in how regulatory regimes apply and how industry can navigate multiple competing regimes
- We consider DP-REG has a role in responding to this need for regulatory coherence.

ESTIMATES BRIEF: OTHER (PROMINENT ISSUE)

Subject: Generative AI (e.g. ChatGPT)

Key details			
When did OAIC learn of matter?	Through monitoring the development of new AI technologies		
Origin	OAIC identified		
Is there an issue in the public domain?	Yes - public submissions, guidance, DP-REG working papers		
Jurisdiction	General privacy		
Responsible Branch & team	Health & Government, Regulation & Strategy		
Content author	Stephanie Otorepec	Phone	s 47F
Clearance by	Sarah Ghali	Phone	02 9942 4208
Brief current at	8 October 2024		

Brief overview

- Generative AI is an AI model with the capability of learning to generate content such as images and text, and other media with similar properties to its training data. The key privacy risks include the loss of control over personal information, inaccurate outputs and the misuse of generative AI systems by malicious actors in ways that impact on individual privacy and cause harm.
- Privacy must be a central consideration in the design, development and use of generative AI technologies, and a multi-faceted and co-ordinated regulatory approach is required.

Current action

- We have taken an active approach in monitoring the development of new AI technologies and particularly the emergence of generative AI.
- We have recently published guidance on:
 - Privacy and developing and training generative AI models
 - Privacy and the use of commercially available AI products
- We provided a submission to the Department of Industry, Science and Resources (DISR) on the *Proposals paper for introducing mandatory guardrails for AI in high-risk settings*. The Digital Platform Regulators Forum (DP-REG) also published a joint submission. The submissions expressed

support for the mandatory guardrails and favoured a framework approach to implementation (Option 2) which uplifts existing regulatory frameworks and supports coordination.

- In 2023 we issued a [joint statement](#) with international counterparts on data scraping, which discussed the significant privacy concerns of data scraping technologies and steps that social media companies, other websites and individuals could take to protect personal information.
- Through the DP-REG forum we have recently published [Working Paper 3: Examination of technology: Multimodal Foundation Models](#) (September 2024) which examines the impact of MFMs on the regulatory roles of each DP-REG member.

Recent developments

Safe and responsible use of AI workstream

- In 2023, the Government sought views on governance arrangements for the use and development of AI through its *Safe and responsible AI in Australia* discussion paper. The Government's [interim response](#), released in January 2024, committed to developing a regulatory environment that builds community trust and promotes AI adoption, and has since been followed by the recent release of the proposed mandatory guardrails.
- In September 2024, the Department of Industry, Science and Resources (DISR) published a [Voluntary AI Safety Standard](#) which contains 10 voluntary AI guardrails to help organisations across the AI supply chain to develop and deploy AI systems safely and reliably.

DTA work on government use of AI

- The Digital Transformation Agency's (DTA) [Policy for responsible use of AI in government](#) took effect from 1 September 2024. The policy includes mandatory obligations for accountable officials and requires agencies to publish a transparency statement on their approach to AI adoption and use.
- DTA and DISR updated their [Interim guidance on government use of public generative AI tools](#) in November 2023. The guidance is intended to assist APS staff adhere to Australia's [AI Ethics Principles](#) when using generative AI tools.
- DTA coordinated a 6-month trial of 365 Copilot between January and June 2024. It [has advised](#) it will publicly share learnings from the trial over the coming months.
- Each individual agency considering the use of generative AI is required to assess its risk and legal compliance including the undertaking of a PIA under the Australian Government Agencies Privacy Code.

Select Committee on Adopting Artificial Intelligence

- On 26 March 2024, the Select Committee on Adopting Artificial Intelligence (AI) was established to inquire into the opportunities and impacts for Australia arising out of the uptake of AI technologies. The Committee's Terms of Reference includes consideration of the 'risks and harms arising from the adoption of AI technologies, including bias, discrimination and error'.
- DP-REG made a [joint submission](#) drawing attention to the recent work of DP-REG and its members. The Committee is due to report by 26 November 2024.

Expected next steps/dates

- The OAIC will continue to monitor developments in generative AI and engage with the Government's Safe and Responsible AI work program.

Background: public matters only**Issues of note for OAIC**

- **Privacy law reform:** The *Privacy and Other Legislation Amendment Bill 2024* proposes amendments to require entities to include information in their privacy policies about automated decisions that significantly affect the rights or interests of an individual. This would apply to the use of automated decision-making systems which use AI and/or generative AI.

ESTIMATES BRIEF: MATTER

Subject: Vehicle privacy

Type: preliminary inquiries

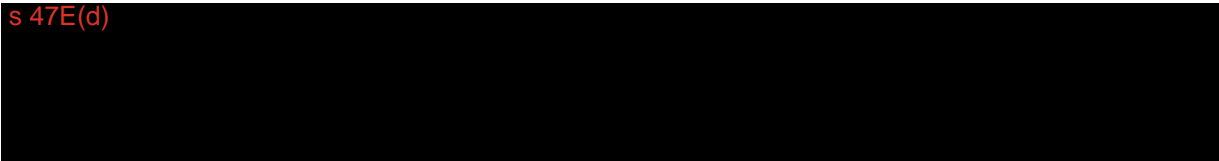
Key details			
When did OAIC learn of matter?	7 February 2024 – CHOICE article on connected vehicles and allegations against Toyota’s collection of personal information 9 February 2024 – ABC article		
Origin	Media reports		
Jurisdiction	General privacy - APPs		
Responsible Branch & team	Dispute Resolution, Commissioner initiated investigations		
Content author	Wynn Le & Natalie Le	Phone	02 9942 4221
Clearance by	Andre Castaldi	Phone	02 9942 4124
Brief current at	22 November 2024		

Brief overview

- Connected vehicles use information and communications technologies to share data and communicate with drivers, other road users, roadside infrastructure and other wireless services through in-built mobile or satellite network infrastructure.
- The OAIC is aware of media reports in Australia – e.g. [CHOICE](#), [ABC](#) – and in other jurisdictions – e.g. [Mozilla Foundation report](#) – regarding the privacy risks and impacts of connected vehicles, including:
 - a) broad collection of personal information
 - b) lack of transparency around collection, use and disclosure of personal information
 - c) absence of informed and meaningful consent
 - d) lack of individual control over their personal information, and
 - e) security of personal information.
- Several proposals in the Privacy Act Review may help address these risks, such as the introduction of a fair and reasonable standard for the collection, use and disclosure of personal information (proposal 12.1), amending the definition of ‘consent’ to provide that consent must be voluntary, current,

specific and unambiguous (proposal 11.1), and requiring consent to handle precise geolocation tracking data and to trade personal information (proposals 4.10 and 20.4).

Current action and next steps

- The OAIC identified connected cars as a priority area of inquiry earlier this year.
- s 47E(d)

- The OAIC received responses to our inquiries, and issued further inquiries which were returnable throughout November. We received responses to some of those inquiries on Friday 1 November, and are reviewing those materials and considering next steps.
- As inquiries are ongoing, the OAIC is not able to provide specific details.

Background: public matters only

Issues of note for OAIC

- The most comprehensive study of connected vehicles' privacy practices was conducted by the Mozilla Foundation on the 25 major connected vehicle manufacturers' US-facing privacy policies.
- The CHOICE and ABC articles both referenced this study and the fact that the study found that connected cars are one of the worst products when it comes to privacy practices.
- In March 2024 [Reuters reported](#) that the United States Commerce Department opened an investigation into whether Chinese vehicle imports pose national security risks due to concerns about the amount of 'sensitive data' being collected by connected vehicles.
- Dr Katherine Kemp of the University of NSW is [currently leading a project](#) on privacy in connected motor vehicles, with findings expected to be published in late 2024. This includes considering the intrusiveness of motor vehicle manufacturers' data practices.

ESTIMATES BRIEF: MATTER**Respondent name: Medisecure****Type:** Preliminary inquiries

Key details			
When did OAIC learn of matter?	9 May 2024		
How was OAIC advised/origin?	NDB		
Date action commenced	9 May 2024 (assessment and triage)		
Date action ceased	16 Sept 2024 (130 days)		
Jurisdiction	APPs, Part IIIC (NDB)		
Related representative action?	No		
Responsible Branch & team	Dispute Resolution – NDB team		
Content author	Natalie Le	Phone	02 9942 4158
Clearance by	Andre Castaldi	Phone	02 9942 4124
Brief current at	8 October 2024		

Brief description of matter

- Ransomware incident impacting former prescription delivery service provider MediSecure. This service enabled paper and electronic prescriptions to be delivered from prescribers to a pharmacy of an individual's choice.
- MediSecure advised that the 6.5TB of impacted data included personal of individuals and health service providers, including Medicare numbers, date of birth and prescription information.
- MediSecure believes the root cause of the incident was compromised credentials of a third-party subcontracted IT developer that had access to a legacy server.

Recent developments

- 18 July 2024 – MediSecure issued a public statement on the data breach
- The OAIC was advised that approximately 12.9 million individuals may have been impacted by its cyber security incident.
- This is the largest number of individuals impacted notified to the OAIC under the Notifiable Data Breaches scheme.

OAIC action

- The OAIC made preliminary inquiries with MediSecure with the focus on NDB scheme compliance.
- 13 September 2024 – the OAIC made a [public statement](#) that we would be finalising our inquiries into MediSecure and would not pursue an investigation into the personal information handling practices of MediSecure on the basis that:
 - MediSecure entered administration on 3 June 2024
 - the possible remedies that we could obtain for the community will not be proportionate to the resources required for a comprehensive investigation.

Background: public matters only
--

Issues of note for OAIC

- The OAIC worked with other agencies, including the National Office of Cyber Security to ensure a whole-of-government approach to building awareness about the matter.

ESTIMATES BRIEF: MATTER**Respondent name: NSW Clubs (Outabox)****Type:** preliminary enquiries

Key details			
When did OAIC learn of matter?	30 April 2024		
How was OAIC advised/origin?	NDB		
Date action commenced	30 April 2024		
Age of matter in days	Various – oldest matter DBN24/00533 received on 30 April 2024 (157 days)		
Jurisdiction	APPs, Part IIIC (NDB)		
Related representative action?	No		
Responsible Branch & team	Dispute Resolution – NDB		
Content author	Natalie Le	Phone	02 9942 4158
Clearance by	Andre Castaldi	Phone	02 9942 4124
Brief current at	8 October 2024		

Brief description of matter

- This is a multi-party data breach incident involving Outabox, a tech company that supplied sign in terminals used by NSW clubs venues.
- Personal information held by Outabox was released to the public via a website which allowed people to search names, which returned redacted information about the contents of the dataset.
- Impacted Clubs advise that the personal information involved includes contact information, date of birth and driver's license details. The website stated that the dataset involved biometric facial recognition data and slot machine usage.

Current action

- Preliminary inquiries conducted with impacted clubs, with a focus on the extent of the incident and NDB scheme compliance.
- Assessments of NDB scheme compliance ongoing.

Recent developments

- The OAIC received contact and information from Outabox in relation to the incident
- The OAIC is considering issues around the use of ID scanning technology and collection of personal information practices by clubs in general.
- In addition to the NDB received on the issue, the OAIC has received individual complaints, but that we cannot comment publicly on individual matters
- The OAIC is considering the issue more broadly in our assessment and education activities.

Background: public matters only
--

Issues of note for OAIC

- Multi-party data breach/supply chain issues.
- Media reported that Police arrested an individual in connection to this incident on 2 May 2024.

ESTIMATES BRIEF: OTHER**Subject: McKenzie – Australian Fisheries Management Authority****Type:** preliminary inquiries

Key details			
When did OAIC learn of matter?	17 June 2024		
Origin	Referral from Senator McKenzie (letter)		
Is there an issue in the public domain?	Senator McKenzie raised the issue with the Australian Fisheries Management Authority (AFMA) during Senate Estimates on 31 May 2024		
Jurisdiction	APPs		
Responsible Branch & team	Dispute Resolution, Commissioner Initiated Investigations team		
Content author	Wynn & Natalie	Phone	02 9942 4221
Clearance by	Andre Castaldi	Phone	02 9942 4124
Brief current at	10 October 2024		

Brief overview of issue

- Senator McKenzie raised concerns about Australian Fisheries Management Authority's (AFMA) practice of releasing personal details of Commonwealth fisheries permit holders to energy companies.
- During Senate Estimates (May 2024), AFMA confirmed that it generally discloses names, postal addresses and email addresses of permit holders to energy companies.
- Senator McKenzie requested that the OAIC investigate whether these disclosures were in breach of the APPs (letter dated 6 June 2024).

Current action

- The OAIC made preliminary inquiries with AFMA and a detailed response was provided in July 2024
- The OAIC assessed AFMA's response and considered the disclosures to be likely compliant with APP 6.2(b). In particular:
 - AFMA advised that under Regulation 104 of the Fisheries Management Regulations 2019I (FM Regs), AFMA may disclose information to a person conducting research if AFMA is satisfied that

the research is related to, or will support AFMA's functions or activities.

- Information disclosed in accordance with Regulation 104 of the FM Regs is authorised for the purpose of s 7(4) of the Fisheries Administration Act 1991.
- The file was closed on 4 October 2024.

Background: public matters only

Issues of note for OAIC

- AFMA indicated energy companies were required to agree to confidentiality agreements upon receiving personal data. Senator McKenzie advises that she is aware of evidence of incidences where this data has been on-forwarded by companies.
- This was put to AFMA who advised the OAIC in its response that it has not been provided with such evidence but welcomes such evidence so that it can be investigated.

ESTIMATES BRIEF: OTHER

Subject: Services Australia matters

Type: Brief

Key details			
When did OAIC learn of matter?	Ongoing		
Origin	Individual Complaints		
Is there an issue in the public domain?	N/A		
Jurisdiction	Privacy		
Responsible Branch & team	Dispute Resolution, Privacy Case Management		
Content author	Leigh McCarthy	Phone	02 9942 4260
Clearance by	Andre Castaldi	Phone	02 9942 4142
Brief current at	25 November 2024		

Brief overview of other

- s 47E(d) [REDACTED]
- Some of the investigations use compulsory powers under s44 of the Privacy Act, necessitating a notification to the responsible Minister under s 43(7) of the Privacy Act.

Current action

- The OAIC currently has 38 complaints regarding Services Australia at various stages of dispute. Of these, 17 over 12 months old.
- s 47E(d) [REDACTED]

Recent developments

- On 12 September 2024 Services Australia and OAIC met to discuss privacy complaints at various stages of completion with a view to establishing a productive relationship focused on early resolution.
- OAIC and Servies Australia propose to initiate a regular round table to facilitate dialogue between the agencies.

Expected next steps/dates

- The investigations remain open and active.

- Where possible we are resolving disputes as early as possible, including through conciliation.

Background: public matters only

Issues of note for OAIC

- N/A

ESTIMATES BRIEF: OTHER**Subject: DVA matters****Type: Brief**

Key details			
When did OAIC learn of matter?	Ongoing		
Origin	Individual and representative complaints		
Is there an issue in the public domain?	Representative complaint; Media coverage re discontinuation of MATES Program; Federal Court claim (14 November 2023)		
Jurisdiction	Privacy related		
Responsible Branch & team	Early Resolution		
Content author	Rachel Mathison	Phone	0292460443
Clearance by	Andre Castaldi	Phone	02 9942 4124
Brief current at	21 November 2024		

Brief overview of other

- The OAIC has two cohorts of privacy complaints (83 in total) in relation to DVA:
 - the Veterans' Medicines Advice and Therapeutics Education Services (MATES) program
 - 1 representative complaint received 20 October 2023 and
 - **s 47** individual complaints received both before and after the representative complaint.
 - All complaints allege repeated breaches of their sensitive information, and all allege no consent was ever provided. Most complaints concern breaches with APP 3, APP 5, APP 6, APP 11, one specifically mentioning section 13G (Serious and repeated interferences with privacy) of the Privacy Act.
 - A majority of the MATES complaints have related APP 12 or FOI matters also under consideration by either the OAIC or the DVA.
 - non MATES related – **s 47E(d)**.

Current action

- All complaints are open and at varying stages of resolution.

- s 47E(d) (including MATES related) are over 12 months old.

Recent developments

- Meeting between OAIC and Gordon Legal (acting for the representative complainant) took place on 9 October 2024.
- Meeting between OAIC and DVA took place on 14 October 2024 to discuss of MATES representative and individual complaints.

Expected next steps/dates

- The OAIC continues to engage with the DVA in relation to the matters
- Non MATES complaints being progressed as resources allow

Issues of note for OAIC

- The OAIC is working closely with DVA in order to identify the most efficient and timely response to the complaints on hand.
- It is envisaged that further investigation of the issues identified in the complaints will facilitate an opportunity for the OAIC to work with the respondent to provide further education to ensure compliance with the Privacy Act. This supports our risk based, education and enforcement focused posture.

Background: public matters only

- 26 April 2023, Australian Information Commissioner's Determination (['ADJ' and The Secretary to the Department of Veterans' Affairs \(Privacy\) \[2023\] AICmr 29 \(26 April 2023\)](#)) was made, finding:
 - DVA breached APP 3 by collecting the complainant's prescription information from the Department of Human Services (DHS) on the collection dates as the complainant did not provide consent to the collection for the purpose of the MATES program
 - DVA breached APP 6 by using and disclosing the complainant's prescription information to the University and the GP
 - Awarded \$5,000 in compensation to the complainant.
- 29 August 2023, [Statement from the Department of Veterans' Affairs - Veterans' MATES program – Update](#) which responds to the determination and which includes:

... The recent determination by the Office of the Australian Information Commissioner (OAIC) relates to an individual case in 2017 whereby the individual opted out of participation in the program and DVA did not fully implement this request. DVA has unequivocally apologised for this.

Veterans have always had the ability to opt out of the program, however DVA has taken steps to more prominently communicate this, so veterans can make an informed decision about their participation.

The OAIC determination has highlighted that DVA's notices to veterans could include more information about how their billing information would be used for the purpose of the Veterans' MATES program. More information about privacy, and the ability of veterans to opt-out of the Veterans' MATES program has been added to DVA's website and Veterans' MATES program materials.

The Secretary has requested a review of the Veterans' MATES program to ensure that all requests to opt out of the program have been actioned appropriately, and to provide further assurance of compliance with the opt out provisions under the program. As part of this review, DVA has temporarily suspended provision of further data while it ensures individual requests regarding participation are dealt with, and frameworks are in place to ensure the circumstances addressed by the OAIC in its determination do not reoccur. DVA will complete this process as quickly as possible.

- A similarly worded statement was also published on 10 August 2023, [Statement from the Department of Veterans' Affairs - Veterans' MATES program](#).

ESTIMATES BRIEF

Committee members

Note: Since the last Estimates, there has not been a change in membership of the committee. **Please also note that biographies have been shortened from previous briefs.**

Members who asked questions at the 29 May Estimates were the Chair (Senator Green, ALP Qld), Senators Paterson (Lib, Vic), Chandler (Lib, Tas), Scarr (Lib, Qld), and Shoebridge (Greens, NSW). Senator Watt, Minister for Agriculture, Fisheries and Forestry, Minister for Emergency Management, and the Secretary of the Attorney-General's Department, Katherine Jones, were also in attendance.

Senate Standing Committees on Legal and Constitutional Affairs, Legislation committee membership:

- Senator Nita Green – ALP, Qld (chair)
- Senator Paul Scarr – Liberal Party, Qld (deputy chair)
- Senator Alex Antic – Liberal Party, SA
- Senator Varun Ghosh – ALP, WA
- Senator Helen Polley – ALP, Tas
- Senator David Shoebridge – Greens, NSW
- Senator Sarah Hanson-Young – Greens, SA (substitute member – copyright bill)

Senator Nita Green, Chair



Senator for Queensland; Chair of Legal and Constitutional Affairs Legislation Committee; Deputy Chair of Legal and Constitutional Affairs References Committee; Chair of Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum

Party: Labor

Webpage: nitagreen.com.au

Areas of interest

- Supporting more apprentices and trainees in regional areas, working conditions, a strong manufacturing industry and recovery in [regional Queensland](#)

- [National inquiry into consent laws](#) (plus education, law reform, governance), [action on family violence as a health crisis](#)
- Issues raised at previous estimates hearings:
 - The findings of the Strategic Review and the progress of implementation
 - The intrusive tracking practices of social media companies
 - Senator sought an update at the last Estimates on a complaint made to the OAIC on 24 November 2022 about an alleged data breach at Amex. States that the complainant gave powerful evidence to the committee on 27 July on the committee's inquiry into sexual consent laws. The Senator has written articles about consent in the past.

Recent articles

- Nil relevant

Senator Paul Scarr, Deputy Chair



Senator for Queensland; Deputy Opposition Whip in the Senate; Chair of Legal and Constitutional Affairs References Committee; Deputy Chair of Legal and Constitutional Affairs Legislation Committee

Party: Liberal

Webpage: paulscarr.com.au

Areas of interest

- Freedom of the individual, smaller government, lower taxes, less regulation and opportunity for all
- Issues raised at previous estimates hearings:
 - What measures have been taken to address culture at the OAIC in the wake of comments made in the FOI Inquiry

- The timeliness of the response to FOI requests, extension of time data, with reference to a response by the AGD
- Class action matters being commenced before the OAIC had resolved its investigations into the matters
- The impact on small business of coming under the Privacy Act

Recent articles

- None since previous estimates
- [ABC News](#), 7 May 2024, The Coalition says proposed deportation powers should be tightened to avoid affecting thousands more than intended.
- Re the Legal and Constitutional Affairs Legislation Committee report into the Identity Verification Services (IVS) Bill, Senator Scarr tabled a dissenting report ([article](#)) from 13 November last year.

Senator Alex Antic



Senator for South Australia

Party: Liberal

Webpage: alexantic.com.au

Areas of interest

- [Big tech's power and influence](#), concern about [forced digital identity](#), vaccine discrimination, the establishment of an ABC ombudsman, an Australian Parliament free from foreign influence and the Human Rights (Children Born Alive Protection) Bill 2022
- Issues raised at previous estimates hearings:
 - Nil

Recent articles

- [Liberal senator Alex Antic praises Donald Trump for shifting political discourse, 5 October, Sky News.](#)

Senator Varun Ghosh



Senator for Western Australia. Committee membership: Aboriginal and Torres Strait Islander Affairs served from 29.2.2024 to present
Treaties served from 29.2.2024 to present; Joint Statutory: National Anti-Corruption Commission served from 27.3.2024 to present; Senate Legislative and General Purpose Standing: Legal and Constitutional Affairs: Legislation served from 29.2.2024 to present;

Party: Labor

Areas of interest

- Improving education access and opportunities for all
- Money-laundering and countering the financing of terrorism (based on previous Estimates)

Recent articles

- Nil relevant

Senator Helen Polley



Senator for Tasmania; Chair of Parliamentary Joint Committee on Law Enforcement

Party: Labor

Areas of interest

- The rights of working Australians, supporting manufacturing and other industries in Tasmania, and advocating for people living and working in the aged and community care sector
- Issues raised at previous estimates hearings:
 - Nil

Recent articles

- Nil relevant

Senator David Shoebridge

Senator for New South Wales

Party: Greens, NSW

Areas of interest

- Legalising cannabis, housing and Treaty ('a formal agreement between First Nations people and the Commonwealth Government that acknowledges sovereignty, protects rights and sets the underlying terms for First Nations people to negotiate with the Government moving forward')
- Issues raised at previous estimates hearings:
 - Progress of the Grubisa matter
 - Length of time of OAIC privacy investigations and reasons for length of time
 - Details of all the privacy investigations on hand (on notice)

- The impact of budget cuts on investigations and possible staffing cuts
- The compliance of Clearview AI with the OAIC's determination.
- Progress of 7-Eleven matters and Bunnings investigation
- Staff numbers devoted to FOI and impact of any budget cuts
- Latest FOI statistics and progress against the backlog

Recent articles

- [Labor accused of trying to quietly curtail appeals from people seeking asylum](#), The Guardian, 21 September 2024
- [Royal Commission defends publication of secret military report](#), The Guardian, 18 September, 2024
- [Senator's X coverage from last Estimates](#), 29 May 2024.
- [Action only taken after Estimates reveal failure](#), The Mandarin, 16 January 2024. Some government departments are only prompted to clean house and fix issues quickly once they are asked some questions during senate estimates, according to Greens senator David Shoebridge. It was prodding and poking from Shoebridge that resulted in four investigations being finalised by the OAIC with the longest of the four running 804 days and the shortest running for 250 days.

Senator James Paterson



A number of other senators have also asked questions at previous estimates, including:

Senator James Paterson (Liberal) – Asked a number of questions about the OAIC's inquiries with TikTok and the nature of the OAIC's dealings with the company.

Recent articles

- [Privacy watchdog facing questions over aborted TikTok probe](#), The Age, 31 May 2024.
- [Liberal MP urges Australia to follow US in TikTok crackdown](#), The Guardian, 17 March 2024
- ['Protect Australians from TikTok': James Paterson slams local brands for using app](#), Sky, 15 Jan 2024

Senator Claire Chandler



Senator Claire Chandler (Lib, Tas) asked questions about a survey of public service members by an external provider and was practices were in place to avoid identification of participants. A question was taken on notice.

Senator Malcolm Roberts



Senator Malcolm Roberts (One Nation) has asked a number of questions over the years. He is a member of One Nation and has been a Senator for Queensland since 2019. He has asked questions in relations to the pandemic, surveillance and climate science in various committees.

Substitute Member

Senator Sarah Hanson-Young



Australian Greens, SA

May Estimates:

At the May Estimates meeting Senator Murray Watt, Minister for Agriculture, Fisheries and Forestry of Australia, was also in attendance (ALP, Qld).

[Minister Murray Watt](#)



Senator Anthony Chisolm was at the **March 2024 Estimates** - Assistant Minister for Education Assistant Minister for Regional Development, Deputy Manager of Government Business in the Senate (ALP, Qld)

[Assistant Minister Anthony Chisolm](#)



Other Senators

Participating Members

Senators Penny Allman-Payne, Wendy Askew, Ralph Babet, Catryna Bilyk, Simon Birmingham, Andrew Bragg, Slade Brockman, Carol Brown, Ross Cadell, Matthew Canavan, Michaelia Cash, Claire Chandler, Richard Colbeck, Dorinda Cox, Lisa Darmanin, Lisa Darmanin, Perin Davey, Jonathon Duniham, Mehreen Faruqi, David Fawcett, Varun Ghosh, Karen Grogan, Pauline Hanson, Sarah Hanson-Young, Sarah Henderson, Steph Hodgins-May, Hollie Hughes, Jane Hume, Maria Kovacic, Jacqui Lambie, Kerryne Liddle, Susan McDonald, James McGrath, Bridget McKenzie, Andrew McLachlan, Jacinta Nampijinpa Price, Deborah O'Neill, Matt O'Sullivan, James Paterson, Barbara Pocock, David Pocock, Louise Pratt, Gerard Rennick, Linda Reynolds, Malcolm Roberts, Anne Ruston, Dave Sharma, Tony Sheldon, David Shoebridge, Dean Smith, Marielle Smith, Jordon Steele-John, Glenn Sterle, Jana Stewart, Lidia Thorpe, Tammy Tyrrell, Anne Urquhart, David Van, Jess Walsh, Larissa Waters, Peter Wish-Wilson

Update 'Current at' date below following each update	Cleared by:	Action officer: Andrew Stokes
Current at: 11/10/2024	Phone number:	Action officer number: 02 9942 4127

OAIC Statistics as at 25 November

IC reviews

- Received FYTD: **751** (27% increase on 25 November 2023)
 - Deemed at time of application: **583 (78%)**
- Finalised FYTD: **1,008** (121% increase on 25 November 2023)
 - Deemed at time of application: **580 (58%)**
- Percentage finalised within 12 months (target 80%): **64%**
- On hand: **1,769**
 - Deemed at time of application: **723 (41%)**
 - Over 12 months old: **985 (56%)**
 - By year received: 2020 – 30 (2%); 2021 – 243 (14%); 2022 – 346 (20%)
- IC decisions (s55K) FYTD: **108** (100% increase on 25 November 2023)
 - Percentage of total cases finalised: **11%**

FOI complaints

- Received FYTD: **103** (17% increase on 25 November 2023)
- Finalised FYTD: **140** (137% increase on 25 November 2023)
- Percentage finalised within 12 months (target 80%): **82%**
- On hand: **41**
 - Over 12 months old: **1 (2%)**
 - By year received: 2023 – 1

Privacy complaints

- Received FYTD: **1,194** (10% decrease on 25 November 2023)
- Finalised FYTD: **1,011** (13% decrease on 25 November 2023)
- Percentage finalised within 12 months (target 80%): **64%**
- On hand: **2,539**
 - Over 12 months old: **737 (29%)**
 - By year received: 2018 – 6 (<0.5%); 2019 – 1 (<0.5%); 2020 – 5 (<0.5%); 2021 – 8 (<0.5%); 2022 – 105 (4%)

CIIs

- Investigations commenced FYTD: **2**
- Finalised FYTD: **4**
- Percentage finalised within 12 months (target 80%): **50%**

NDBs

- Investigations commenced FYTD: **500**
- Finalised FYTD: **555**
- Percentage finalised within 12 months (target 80%): **81%**

ESTIMATES BRIEF

Key statistics

1. 2023–24 financial year to date figures (including matters on hand) are as at **31 October 2024** throughout this report.
2. Statistics in this report are current as of 18 November 2024. On occasion, data is recorded or re-categorised on activities undertaken in prior reporting periods after the conclusion of that reporting period. As a result, some historical data has changed from previously published figures. Similarly, data in this report may be subject to future change.
3. 2024–25 percentage change comparisons to the previous year’s result shows the difference to the equivalent financial year to date performance in 2023–24 (July 2023 to October 2023).
4. Percentages may not add to 100% due to rounding.

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Enquiries

Enquiries received¹

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
FOI						
Enquiries received	2,318	1,829	1,944	1,646	1,618 ²	-
<i>FYTD to 31 Oct</i>	-	-	-	-	530	566
% change from PY	-20%	-21%	6%	-15%	-2%	7% FYTD
Privacy & Other						
Enquiries received	15,104	11,564	10,845	11,633	10,486 ³	-
<i>FYTD to 31 Oct</i>	-	-	-	-	3,876	3,619
% change from PY	-13%	-23%	-6%	7%	-10%	-7% FYTD
Yet to be assessed						
Enquiries received	-	-	-	-	-	11
Total enquiries received	17,422	13,393	12,789	13,279	12,104	4,196
Total % change from PY	-14%	-23%	-5%	4%	-9%	-5% FYTD

Written enquiries closed within 10 working days – target 90%⁴

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
% written enquiries closed						
within 10 business days	79%	66%	75%	71%	97%	45%
No. written enquiries closed within 10 business days	3,517	3,788	3,007	2,887	3,133	498
Total written enquiries closed	4,449	5,735	4,033	4,057	3,229	1,115

¹ Enquiries received data includes all matters incoming to OAIC by telephone, written and in person channel.

² 1,617 in the annual report

³ 10,476 in the annual report

⁴ Calculation methodology is based on **business days** (Monday to Friday, excluding national and NSW public holidays and Christmas shutdown period).

Top 10 privacy issues FYTD⁵

Issue	Enquiries Received FYTD	Percentage of all privacy & other enquiries
APP 12 - Access to Personal Information	480	13%
APP 6 - Use or Disclosure	375	10%
Privacy generally	372	10%
APP 3 - Collection	295	8%
OAIC's jurisdiction	291	8%
APP 11 - Security of Personal Information	241	7%
Exemptions	191	5%
APP 5 - Notification of Collection	125	3%
Credit reporting	104	3%
NDB Scheme	90	2%

⁵ An enquiry may contain more than one issue.

Privacy

Privacy complaints

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Ongoing at period close	776	1,102	1,441	2,261	2,356	2,526
Ave age of matters ongoing at period close (months)	6.3	6.1	6.7	6.3	8.5	9.0
Received	2,675	2,479	2,545	3,396	3,198	-
FYTD to 31 Oct	-	-	-	-	1,104	1,025
% change from PY	-19%	-7%	3%	33%	-6%	-7% FYTD
Closed	3,369	2,153	2,206	2,576	3,103	-
FYTD to 31 Oct					962	855
% change from PY	15%	-36%	2%	17%	20%	-11% FYTD
Average months to close	5.1	4.8	6.0	6.4	7.4	8.4

Privacy complaints closed within 12 months - target 80%

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
% closed <i>within</i> 365 days	87%	94%	90%	84%	78%	65%
Number closed within 365 days	2,939	2,017	1,979	2,160	2,421	559
% closed <i>over</i> 365 days	13%	6%	10%	16%	22%	35%
Number closed over 365 days	430	136	227	416	682	296

Outcome of complaints closed

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Decision not to investigate (s.41)	2,884 (86%)	1,740 (81%)	1,720 (78%)	1,740 (68%)	2,245 (72%)	642 (75%)
Invalid applications (ss 36 and 40(1A))	477 (14%)	391 (18%)	438 (20%)	649 (25%)	773 (25%)	209 (24%)
Transfer to alternative complaint body (s.50)	-	-	33 (1%)	176 (7%)	79 (3%)	4 (0.5%)
Determination (s.52)	5 (0.1%)	20 (1%)	14 (1%)	10 (0.4%)	6 (0.2%)	-
Other	3 (0.1%)	2 (0.1%)	1 (<0.1%)	1 (<0.1%)	-	-
Total	3,369	2,153	2,206	2,576	3,103	855

Provisions for decisions not to investigate (s 41)

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
s41(1)(a)	975 (34%)	618 (36%)	653 (38%)	552 (32%)	806 (36%)	163 (25%)
s41(1A)	360 (12%)	253 (15%)	272 (16%)	384 (22%)	302 (13%)	105 (16%)
s41(1)(da)	99 (3%)	74 (4%)	42 (2%)	51 (3%)	244 (11%)	103 (16%)
s41(2)(a)	729 (25%)	305 (18%)	241 (14%)	170 (10%)	247 (11%)	72 (11%)
s41(1)(db)	205 (7%)	124 (7%)	245 (14%)	278 (16%)	196 (9%)	65 (10%)
s41(1A)	158 (5%)	90 (5%)	105 (6%)	157 (9%)	171 (8%)	51 (8%)
s41(1)(dd)	8 (0.3%)	103 (6%)	16 (1%)	19 (1%)	72 (3%)	25 (4%)
s41(2)(b)	142 (5%)	47 (3%)	18 (1%)	9 (1%)	27 (1%)	19 (3%)
s41(1)(f)	8 (0.3%)	4 (0.2%)	8 (0.5%)	21 (1%)	61 (3%)	14 (2%)
s41(1)(d)	126 (4%)	92 (5%)	75 (4%)	49 (3%)	51 (2%)	11 (2%)
s41(1)(c)	31 (1%)	9 (1%)	14 (1%)	12 (1%)	11 (0.5%)	7 (1%)
s41(1)(dc)	36 (1%)	21 (1%)	29 (2%)	35 (2%)	53 (2%)	7 (1%)
s41(1)(e)	7 (0.2%)	-	2 (0.1%)	3 (0.2%)	4 (0.2%)	-
Total	2,884	1,740	1,720	1,740	2,245	642

Percentage of complaints closed by ER and Conciliation Processes⁶

	2021-22	2022-23	2023-24	2024-25
Percentage closed by ER & Conciliation processes	93%	94%	90%	95%

⁶ Indicative only. Derived from use of queues, the current process was implemented from 2021-22 onwards.

Age of privacy complaints on hand

	2020-21		2021-22		2022-23		2023-24		2024-25	
	No.	%	No.	%	No.	%	No.	%	No.	%
≤ 4 months	533	48%	592	41%	1089	48%	843	36%	813	32%
4-6 months	195	18%	194	13%	269	12%	222	9%	331	13%
6-9 months	182	17%	279	19%	382	17%	259	11%	405	16%
9-12 months	55	5%	196	14%	199	9%	307	13%	219	9%
> 12 months	137	12%	180	12%	322	14%	725	31%	758	30%
Total	1,102	100%	1,441	100%	2,261	100%	2,356	100%	2526	100%

Matters on hand by year received

Calendar year received	Matters on hand	Percentage
2018	6 ⁷	0.2%
2019	1	0.0%
2020	5	0.2%
2021	9	0.4%
2022	114	5%
2023	759	30%
2024	1,632	65%
Total	2,526	100%

Top 10 privacy complaint issues⁸

Issue	Received FYTD	% of total
Jurisdiction	148	14%
APP 6 - Use or Disclosure	142	14%
APP 11 - Security of Personal Information	130	13%
APP 12 - Access to Personal Information	85	8%
APP 3 - Collection	62	6%
APP 10 - Quality of Personal Information	40	4%
Credit reporting	24	2%
APP 5 - Notification of Collection	13	1%
APP 13 - Correction	10	1%
APP 7 - Direct Marketing	10	1%
Total	508	50%

⁷ Matters on hold, pending litigation

⁸ One complaint may involve multiple issues

Top 10 sectors – privacy complaints

	2022-23			2023-24			2024-25		
	No.	%	Rank	No.	%	Rank	No.	%	Rank
Finance (incl. superannuation)	657	19%	1	463	14%	1	125	12%	1
Health service providers	329	10%	2	349	11%	3	120	12%	2
Australian Government	292	9%	4	375	12%	2	116	11%	3
Social Media	64	2%	16	158	5%	7	65	6%	4
Telecommunications	297	9%	3	213	7%	4	48	5%	5
Retail	213	6%	5	178	6%	5	45	4%	6
Business/Professional Associations	41	1%	20	58	2%	17	40	4%	7
Online services	153	5%	7	172	5%	6	38	4%	8
Real estate agents	107	3%	9	116	4%	8	36	4%	9
CRBs	80	2%	10	60	2%	16	30	3%	10
Travel & Hospitality industry	76	2%	12	94	3%	10	30	3%	10

My Health Record

MHR privacy enquiries

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Enquiries received	7	3	24	13	24	-
FYTD to 31 Oct	-	-	-	-	5	7
% change from PY	-95%	-57%	700%	-46%	85%	40% FYTD
Enquiries finalised	7	3	21	16	24	-
FYTD to 31 Oct	-	-	-	-	5	7
% change from PY	-95%	-57%	600%	-24%	50%	40% FYTD
Ave business days to close	2	0	4	22	1	4

MHR privacy complaints

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Complaints received	10	4	12	11	14	-
FYTD to 31 Oct	-	-	-	-	3	2
% change from PY	-83%	-60%	200%	-8%	27%	-33% FYTD
Complaints closed	28	4	8	8	8	-
FYTD to 31 Oct	-	-	-	-	2	5
% change from PY	-32%	-86%	100%	0%	0%	150% FYTD
Average months to close	10.1	6.6	8.1	4.6	6.1	15.0

My Health Record NDBs

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
MHR NDBs received	1	2	3	10	39	-
FYTD to 31 Oct	-	-	-	-	21	9
% change same period PY	-97%	100%	50%	233%	290%	-57%
MHR NDBs closed	7	2	3	10	38	-
FYTD to 31 Oct	-	-	-	-	7	8
% change same period PY	-79%	-71%	50%	233%	280%	14%
Average months to close	2.3	2.3	1.3	0.8	1.2	1.0

My Health Record NDBs closed within 2 months – target 80%

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
% closed within 60 days	57%	50%	67%	100%	97%	100%
No. closed within 60 days	4	1	2	10	37	8
% closed over 60 days	43%	50%	33%	0%	3%	0%
No. closed over 60 days	3	1	1	0	1	0

Notifiable Data Breaches

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
NDBs ongoing at period close	183	163	120	120	127	139
Ave age of matters ongoing at period close (months)	5.9	6.7	2.3	3.3	1.4	1.4
NDBs received	1,031	972	858	897	1,001⁹	-
FYTD to 31 Oct	-	-	-	-	293	426
% change from PY	9%	-6%	-12%	5%	12%	45% FYTD
NDBs closed	976	992	901	897	994	-
FYTD to 31 Oct	-	-	-	-	342	414
% change from PY	6%	2%	-9%	-0%	11%	21% FYTD
Average months to close	2.5	2.1	2.3	1.8	1.6	1.3

NDBs closed within 2 months – target 80%

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
% closed within 60 days	61%	80%	81%	77%	85%	84%
No. closed within 60 days	599	794	729	690	840	346
% closed over 60 days	39%	20%	19%	23%	15%	16%
No. closed over 60 days	377	198	172	207	154	68

Age of NDB cases ongoing at period close

	2020-21		2021-22		2022-23		2023-24		2024-25	
	No.	%	No.	%	No.	%	No.	%	No.	%
≤ 4 months	76	47%	103	86%	91	76%	118	93%	132	95%
4-6 months	17	10%	7	6%	3	3%	4	3%	2	1%
6-9 months	17	10%	3	3%	11	9%	4	3%	4	3%
9-12 months	15	9%	4	3%	5	4%	0	0%	1	1%
> 12 months	38	23%	3	3%	10	8%	1	1%	0	0%
Total	163	100%	120	100%	120	100%	127	100%	139	100%

⁹ 1,012 in the annual report and NDB report – difference due to reclassification of notification type.

Top 10 industries

	2022-23			2023-24			2024-25		
	No.	%	Rank	No.	%	Rank	No.	%	Rank
Health service providers	134	15%	1	207	21%	1	94	22%	1
Australian Government	34	4%	9	101	10%	3	70	16%	2
Finance (incl. superannuation)	115	13%	2	105	10%	2	37	9%	3
Retail	42	5%	8	65	6%	6	28	7%	4
Legal, accounting & management services	66	7%	4	57	6%	7	25	6%	5
Education	51	6%	6	69	7%	4	20	5%	6
Personal services (incl employment, child care, vets)	50	6%	7	51	5%	8	16	4%	7
Mining & Manufacturing	23	3%	13	33	3%	10	15	4%	8
Recruitment Agencies	68	8%	3	36	4%	9	15	4%	8
Insurance	66	7%	4	68	7%	5	12	3%	10

Notifications received by source of breach

Source	2022-23		2023-24		2024-25	
	Total	% of Total	Total	% of Total	Total	% of Total
Malicious or criminal attack	631	70%	668	67%	289	68%
<i>Cyber incident</i>	389	43%	406	41%	177	42%
Human error	228	25%	297	30%	120	28%
System fault	38	4%	36	4%	8	2%
Currently unknown	-	-	-	-	9	2%

Breaches affecting 5,000 or more Australians

Number of Australians Affected	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
5,001-10,000	13	16	16	25	19	4
10,001-25,000	17	11	10	14	9	2
25,001-50,000	10	7	6	9	14	3
50,001-100,000	6	8	6	5	4	1
100,001-250,000		5	3	3	8	2
250,001-500,000	3	3		2	4	3
500,001-1,000,000	2	3		1	2	1
1,000,001-10,000,000			1	8	2	
10,000,000 or more				1	1	
Total	51	53	42	68	63	16

Privacy CII

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
CIIs ongoing at period close¹⁰	11	5	8	9	9	7
Ave age of investigations ongoing at period close (months)	16.7	17.9	12.8	5.4	11.6	15.0
CIIs commenced	11	4	7	28	7	-
FYTD to 31 Oct	-	-	-	-	5	0
% change from PY	120%	-64%	75%	300%	-75%	-100% FYTD
CIIs closed	8	10	4	28	6	-
FYTD to 31 Oct	-	-	-	-	1	2
% change from PY	N/A	25%	-60%	600%	-79%	100% FYTD
Average months to close	8.3	21.0	18.6	8.0	11.5	10.0

CIIs closed within target timeframe¹¹ – target 80%

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
% closed within target	38%	20%	25%	68%	67%	100%
No. closed within target	3	2	1	19	4	2
% closed over target	63%	80%	75%	32%	33%	0%
No. closed over target	5	8	3	9	2	0

Age of CIIs ongoing at period close¹⁰

	2020-21		2021-22		2022-23		2023-24		2024-25	
	No.	%	No.	%	No.	%	No.	%	No.	%
≤ 4 months	1	20%	0	0%	4	50%	0	0%	0	0%
4-6 months	0	0%	0	0%	0	0%	2	22%	0	0%
6-9 months	0	0%	0	0%	4	50%	1	11%	1	14%
9-12 months	1	20%	7	88%	0	0%	1	11%	0	0%
> 12 months	3	60%	1	13%	0	0%	5	56%	6	86%
Total	5	100%	8	100%	8	100%	9	100%	7	100%

APP-PIs ongoing at period close

Type	Preliminary inquiries on hand
Preliminary Inquiries	12

¹⁰ Excludes matters subject to ongoing regulatory action such as civil penalty proceedings, determination or enforceable undertakings.

¹¹ Target for 2023-24 and 2024-25 is 80% of investigations to be closed within **12 months**. For previous financial years, the target was for 80% of investigations to be closed within **8 months**.

Determinations

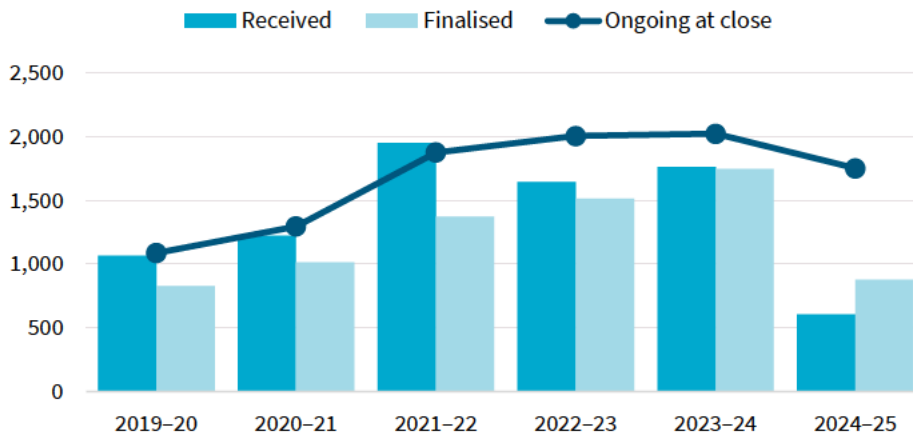
FY	No breach	Breach	Total
2019-20	0	4	4
2020-21	4	12	16
2021-22	4	10	14
2022-23	3	6	9 ¹²
2023-24	1	11	12
2024-25	0	1	1

¹² Of the 9 determinations, 3 have not been published because the Commissioner has approved a non-publication request from the complainant, or because the Commissioner is currently considering redaction requests from the complainant.

Freedom of Information

IC Reviews

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Ongoing at period close	1,089	1,297	1,877	2,008	2,026	1,754
Ave age of matters ongoing at period close (months)	11.6	14.5	15.1	18.9	18.1	18.0
Received	1,067	1,225	1,954	1,649	1,766	-
FYTD to 31 Oct	-	-	-	-	497	605
% change from PY	15%	15%	60%	-16%	7%	22%
Closed	829	1,017	1,374	1,518	1,748	-
FYTD to 31 Oct	-	-	-	-	389	877
% change from PY	26%	23%	35%	10%	15%	125%
Average months to close	8.1	8.3	6.4	9.8	15.5	14.5



IC reviews closed within 12 months – target 80%

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
% closed <i>within</i> 12 months	71%	73%	83%	78%	63%	63%
No. closed within 12 months	592	740	1,142	1,179	1,108	552
% closed <i>over</i> 12 months	29%	27%	17%	22%	37%	37%
No. closed over 12 months	237	277	232	339	640	325

Age of IC reviews ongoing at period close

	2020-21		2021-22		2022-23		2023-24		2024-25	
	No.	%	No.	%	No.	%	No.	%	No.	%
≤ 4 months	265	20%	536	29%	337	17%	447	22%	341	19%
4-6 months	85	7%	116	6%	124	6%	147	7%	121	7%
6-9 months	144	11%	184	10%	150	7%	141	7%	174	10%
9-12 months	137	11%	122	6%	180	9%	134	7%	119	7%
> 12 months	666	51%	919	49%	1,217	61%	1,157	57%	999	57%
Total	1,297	100%	1,877	100%	2,008	100%	2,026	100%	1,754	100%

Matters on hand by date received

Calendar year received	Matters on hand	%
2020	45	3%
2021	256	15%
2022	352	20%
2023	414	24%
2024	687	39%
Total	1,754	100%

- Oldest IC review on hand at 31 October 2024:
 - Date of receipt: 20-Feb-20
 - Number of months old: 56.4

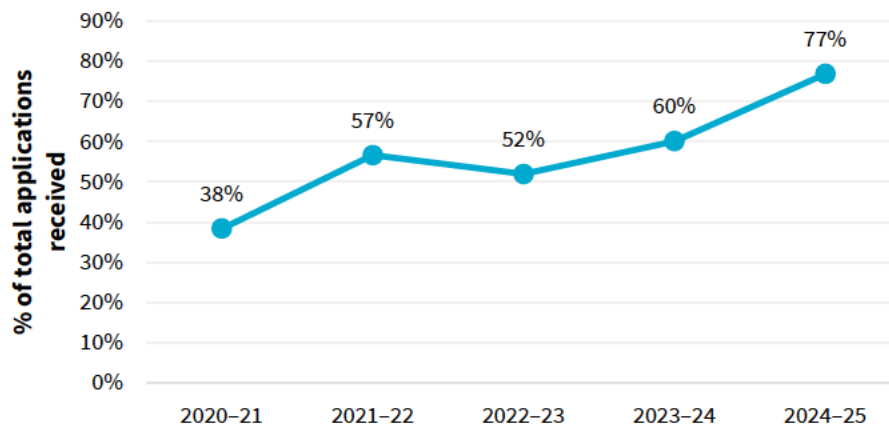
IC reviews finalised FYTD by outcome type

	2020-21		2021-22		2022-23		2023-24		2024-25	
	No.	%	No.	%	No.	%	No.	%	No.	%
IC Decision under s55k	54	5%	104	8%	68	4%	207	12%	95	11%
Other	963	95%	1,270	92%	1,450	96%	1,541	88%	782	89%
Total	1,017	100%	1,374	100%	1,518	100%	1,748	100%	877	100%

Deemed decisions received

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Deemed decisions received	349	470	1,107	856	1,062	-
FYTD to 31 Oct	-	-	-	-	262	465
% change from PY	512%	35%	136%	-23%	24%	77% FYTD
Deemed decisions received (DHA)	169	315	885	595	575	-
FYTD to 31 Oct	-	-	-	-	130	307
% change from PY	956%	86%	181%	-33%	-3%	136% FYTD

Percentage of IC review applications received that were deemed at time of lodgement



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	2023-24	2024-25
Received	178	461	507	524	373	510	633	802	928	1,067	1,225	1,954	1,649	1,766	605
Finalised	26	254	419	646	482	454	515	610	659	829	1,017	1,374	1,518	1,748	877
KPI ¹³	100%	57%	40%	72%	71%	87%	86%	84%	73%	71%	73%	83%	78%	63%	63%
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	15.5	14.5
Finalised less than 12 months	26	233	289	462	343	395	445	513	482	592	740	1,142	1,179	1,108	552
Finalised more than 12 months	-	21	130	184	139	59	70	97	177	237	277	232	339	640	325
On hand end period	152	359	447	325	216	272	390	582	851	1,089	1,297	1,877	2,008	2,026	1,754
<i>On hand end period >12 months</i>	-	57	104	108	34	14	18	81	250	459	666	919	1,217	1,157	999
<i>On hand end period >24 months</i>	-	-	7	27	13	-	-	5	16	118	261	499	655	708	596
IC review deemed refusal (s 15AC)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	21	57	349	470	1,107	856	1,062	465

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

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	2023-24	2024-25
Without formal decision ¹⁴	18 (69%)	96 (38%)	198 (47%)	317 (49%)	174 (36%)	156 (34%)	160 (31%)	229 (38%)	268 (41%)	333 (40%)	402 (40%)	511 (37%)	476 (31%)	776 (44%)	403 (46%)
Withdrawn ¹⁵	4 (15%)	108 (43%)	115 (27%)	187 (29%)	114 (24%)	176 (39%)	222 (43%)	200 (33%)	275 (42%)	334 (40%)	409 (40%)	684 (50%)	879 (58%)	649 (37%)	271 (31%)
s 55F ¹⁶	1 (4%)	2 (1%)	0 (0%)	3 (0%)	2 (0%)	10 (2%)	13 (3%)	42 (7%)	25 (4%)	29 (3%)	14 (1%)	6 (0%)	2 (0%)	4 (0%)	0 (0%)
s 54W(b) ¹⁷	0 (0%)	22 (9%)	17 (4%)	41 (6%)	61 (13%)	32 (7%)	15 (3%)	16 (3%)	31 (5%)	83 (10%)	138 (14%)	69 (5%)	93 (6%)	112 (6%)	108 (12%)
s 55K ¹⁸	3 (12%)	26 (10%)	89 (21%)	98 (15%)	131 (27%)	80 (18%)	105 (20%)	123 (20%)	60 (9%)	50 (6%)	54 (5%)	104 (8%)	68 (4%)	207 (12%)	95 (11%)
Total finalised	26	254	419	646	482	454	515	610	659	829	1,017	1,374	1,518	1,748	877

¹⁴ 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).

¹⁵ Finalised under s 54R (withdrawn by applicant).

¹⁶ Finalised under s 55F (review parties reach agreement).

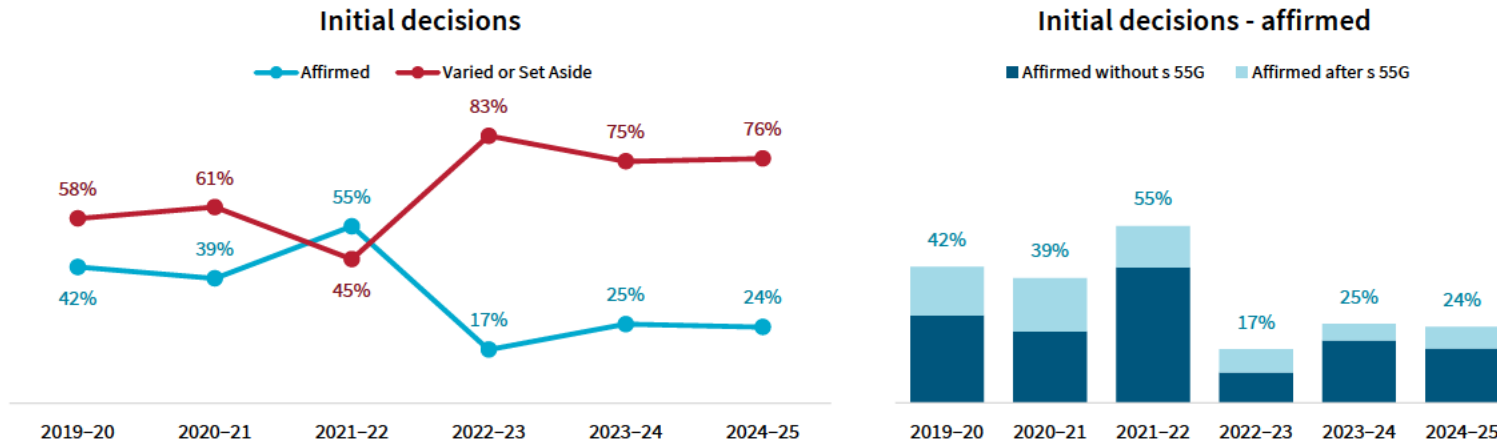
¹⁷ Finalised under s 54W(b) (AAT review).

¹⁸ Finalised under s 55K (decision of Information Commissioner).

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	2023-24	2024-25
Varied ¹⁹	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%)	20 (10%)	14 (15%)
Affirmed after s 55G ²⁰						11 (14%)	17 (16%)	9 (7%)	3 (5%)	8 (16%)	6 (11%)	10 (10%)	3 (4%)	9 (4%)	7 (7%)
Affirmed without s 55G ²¹	1 (33%)	18 (69%)	58 (65%)	40 (41%)	55 (42%)	28 (35%)	49 (47%)	59 (48%)	16 (27%)	16 (32%)	19 (35%)	48 (46%)	8 (12%)	53 (26%)	17 (18%)
Set aside ²²	2 (67%)	8 (31%)	28 (31%)	53 (54%)	53 (40%)	22 (28%)	23 (22%)	45 (37%)	37 (62%)	19 (38%)	22 (41%)	36 (35%)	48 (71%)	125 (60%)	57 (60%)
Total decided	3	26	89	98	131	80	105	123	60	50	54	104	68	207	95

Percentage of initial decisions affirmed vs varied/set aside



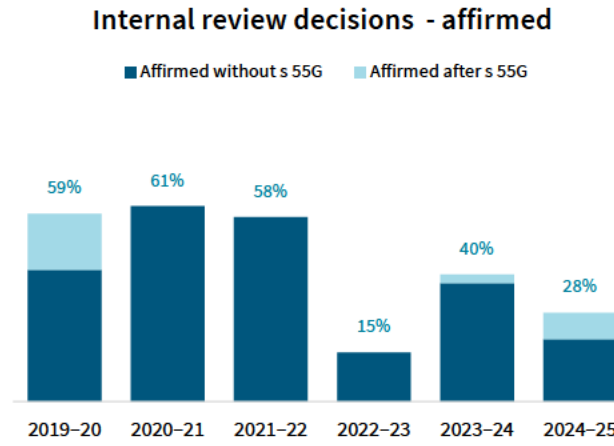
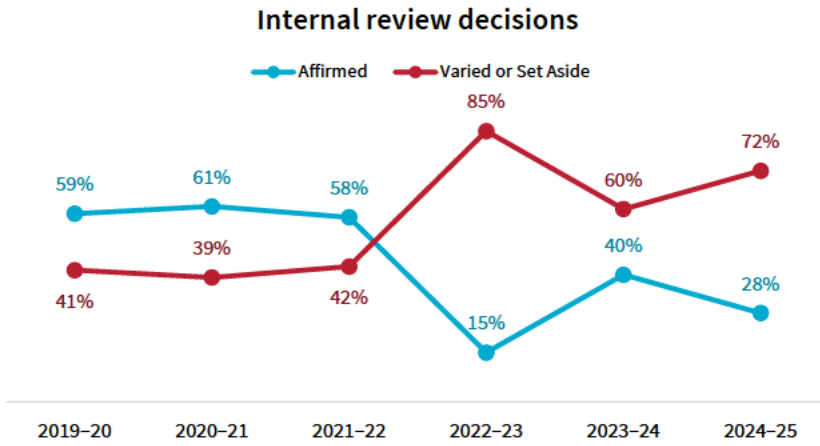
¹⁹ Decision under review altered or changed in some way, for example access is refused based on a different exemption as was set out in the decision under review.

²⁰ Revised decision under review (s 55G) upheld.

²¹ Decision under review upheld.

²² Decision under review (including original decision, internal review decision or s 55G decision) was wrong and not the correct/preferable decision.

Percentage of review applications subject to an internal review affirmed vs varied/set aside



Summary of IC review decisions²³

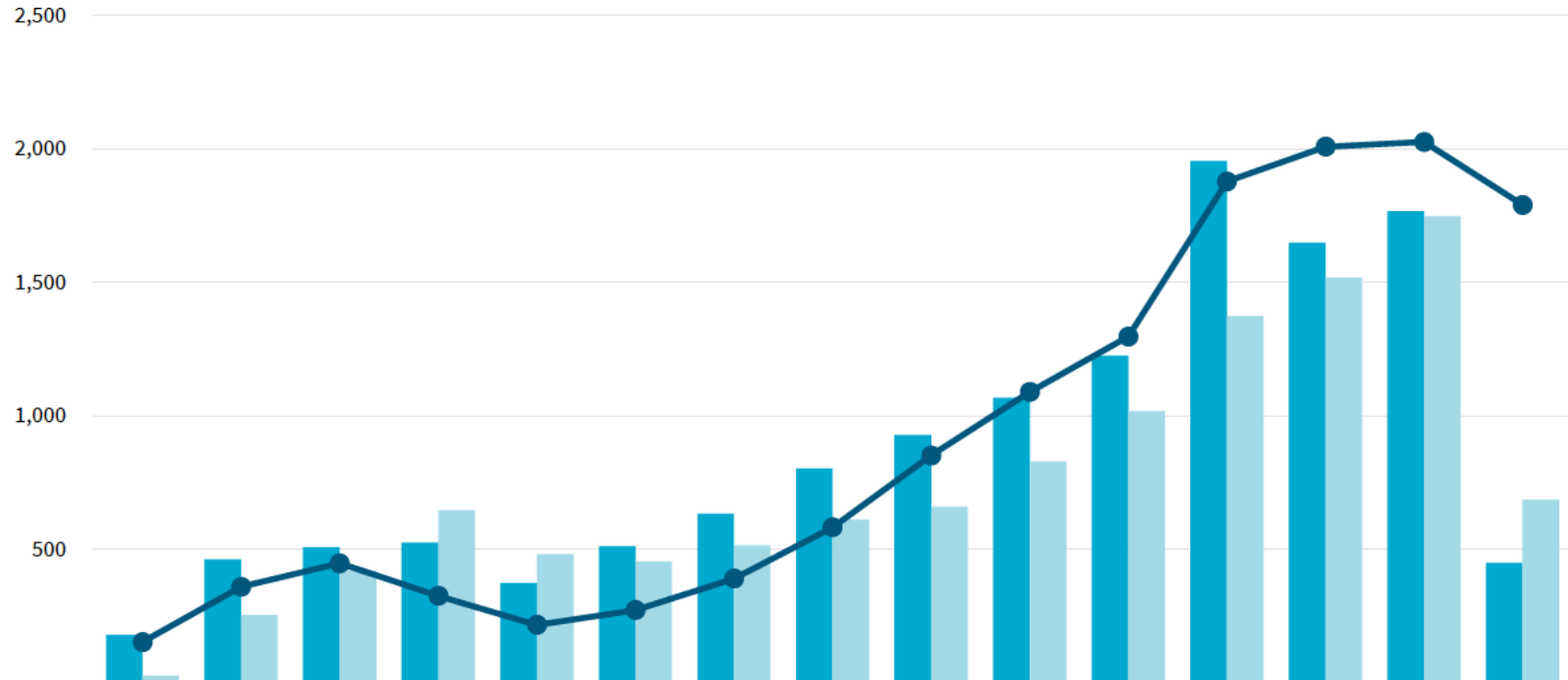
	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total
Freedom of Information Commissioner	4	22	26	32	9	0	0	0	0	0	0	3	45	42	49	232
Australian Information Commissioner	0	2	4	7	14	3	0	0	0	0	0	0	0	2	0	32
Privacy Commissioner	0	1	9	57	42	0	0	0	0	0	0	0	0	0	0	109
Acting FOI Commissioner	0	0	36	0	24	0	0	0	0	0	7	92	9	91	0	259
Acting Australian Information Commissioner and Privacy Commissioner	0	0	0	0	30	62	45	0	0	4	11	0	0	0	0	152
Australian Information Commissioner and Privacy Commissioner	0	0	0	0	0	0	59	123	59	46	37	8	13	4	0	349
Assistant Commissioner, FOI	0	0	0	0	0	0	0	0	0	0	0	0	1	49	35	85
Special Adviser, Freedom of Information Decisions	0	0	0	0	0	0	0	0	0	0	0	0	0	19	11	30
Total	4	25	75	96	119	65	104	123	59	50	55	103	68	207	95	1,248

²³ Some decisions were made in relation to multiple matters. Further, in some instances, the published decision date fell into a different reporting period to the case closure date.

Top 10 agencies with matters involving deemed access refusals due to non-adherence to statutory timeframes

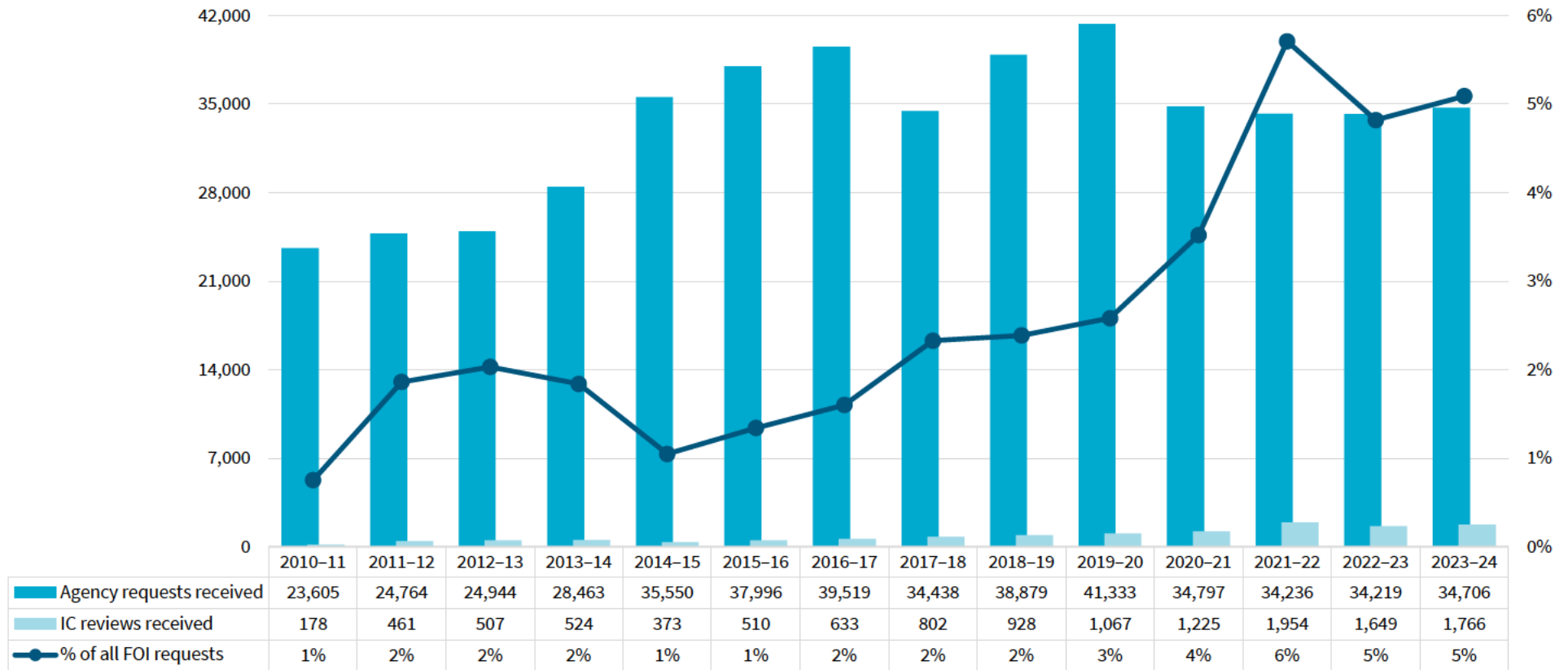
IC review deemed refusal (s 15AC) by respondent agency	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
DHA - Department of Home Affairs	6	16	169	315	885	595	575	307
DVA - Department of Veterans' Affairs	0	4	0	9	15	26	137	28
DHS - Services Australia	1	4	49	14	36	33	27	15
NDIA - National Disability Insurance Agency	0	1	4	4	17	65	60	17
AFP - Australian Federal Police	4	6	13	20	8	32	37	18
DOD - Department of Defence	1	0	4	4	23	18	54	23
DFAT - Department of Foreign Affairs and Trade	0	1	23	26	22	2	4	1
AGD - Attorney-General's Department	1	5	9	1	4	3	16	2
PMC - Department of the Prime Minister and Cabinet	1	1	3	5	5	4	12	9
COMBO - Commonwealth Ombudsman	0	0	0	0	5	20	11	2
Total Top 10	14	38	274	398	1,020	798	933	422
All Others	7	19	75	72	87	58	129	43
Total	21	57	349	470	1,107	856	1,062	465

IC reviews on hand



	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	2023-24	2024-25
IC reviews received	178	461	507	524	373	510	633	802	928	1,067	1,225	1,954	1,648	1,766	449
IC reviews finalised	26	254	419	646	482	454	515	610	659	829	1,017	1,373	1,518	1,748	685
IC reviews on hand at period close	152	359	447	325	216	272	390	582	851	1,089	1,297	1,878	2,008	2,026	1,790

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

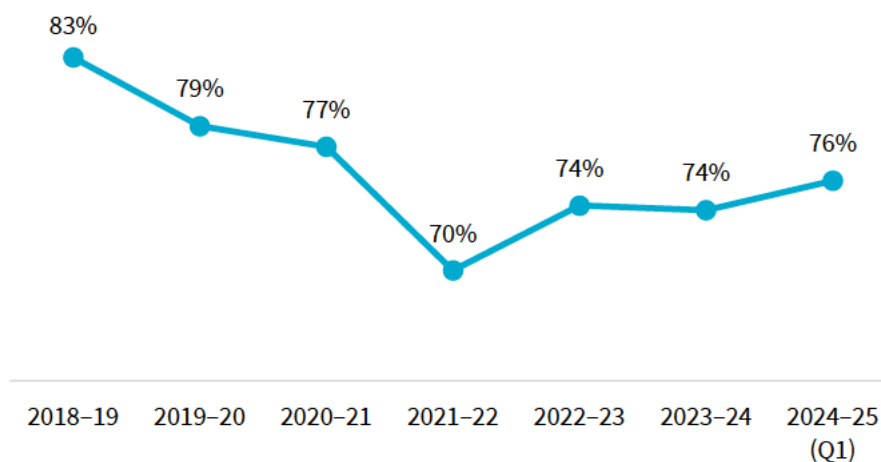


Top 6 exemptions (and percentages) 2023–24

Exemption	Percentage of FOI requests in which exemption applied	Number of times exemption applied
Personal privacy (s 47F)	39%	6,417
Certain operations of agencies (s 47E)	25%	4,107
Deliberative processes (s 47C)	6%	1,014
Secrecy provisions of enactments (s 38)	6%	961
Documents affecting enforcement of law and protection of public safety (s 37)	5%	832
Business (s 47G)	5%	814

Timeliness – FOI request - agency processing response times

	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25 (Q1)
Within statutory timeframe	83%	79%	77%	70%	74%	74%	76%
Up to 30 days over statutory timeframe	8%	7%	6%	7%	7%	9%	8%
31–60 days over statutory timeframe	4%	2%	2%	3%	3%	5%	4%
61–90 days over statutory timeframe	3%	2%	2%	1%	2%	3%	2%
Over 90 days over statutory timeframe	2%	10%	12%	19%	14%	10%	10%

Percentage of FOI requests processed within the statutory timeframe

FOI Complaints

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Complaints ongoing at period close	129	107	100	187	78	40
Ave age of matters ongoing at period close (months)	12.3	18.0	9.7	11.6	6.7	2.8
Complaints received	109	152	216	211	268	-
<i>FYTD to 31 Oct</i>	-	-	-	-	71	84
% change from PY	79%	39%	42%	-2%	27%	18%
Complaints closed	71	174	223	124	377	-
<i>FYTD to 31 Oct</i>	-	-	-	-	51	122
% change from PY	223%	145%	28%	-44%	204%	139%
Average months to close	11.6	6.8	10.5	4.1	10.4	5.2

FOI complaints closed within 12 months – target 80%

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
% closed within 12 months	52%	82%	74%	94%	65%	80%
No. closed within 12 months	37	142	164	116	245	98
% closed over 12 months	48%	18%	26%	6%	35%	20%
No. closed over 12 months	34	32	59	8	132	24

Age of FOI complaints ongoing at period close

	2020-21		2021-22		2022-23		2023-24		2024-25	
	No.	%	No.	%	No.	%	No.	%	No.	%
≤ 4 months	26	24%	39	39%	61	33%	37	47%	30	75%
4-6 months	4	4%	5	5%	15	8%	5	6%	3	8%
6-9 months	5	5%	17	17%	14	7%	9	12%	5	13%
9-12 months	4	4%	13	13%	24	13%	8	10%	0	0%
> 12 months	68	64%	26	26%	73	39%	19	24%	2	5%
Total	107	100%	100	100%	187	100%	78	100%	40	100%

Oldest ongoing FOI complaint – date received: **29-Jun-23 (16.1 months)**

Top 3 agencies within highest volume of FOI complaints ongoing at 31 October 2024

	Complaints ongoing at 31-Oct-24	Percentage of all open complaints
DVA	8	20%
DHA	6	15%
AFP	4	10%
Total	18	45%

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	2023-24	2024-25
Received	88	126	148	77	31	1	36	62	61	109	152	216	211	268	84
Finalised	38	100	149	119	64	0	18	29	22	71	174	223	124	377	122
KPI	100%	96%	90%	82%	81%	N/A	100%	83%	82%	52%	82%	74%	94%	65%	80%
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	10.4	5.2
Finalised less than 12 months	38	96	134	98	52	0	18	24	18	37	142	164	116	245	98
Finalised more than 12 months	0	4	15	21	12	0	0	5	4	34	32	59	8	132	24
On hand end period	50	76	75	33	0	1	19	52	91	129	107	100	187	78	40
On hand end period >12 months	0	8	2	5	0	0	0	4	36	52	68	26	73	19	2
On hand end period >24 months	0	0	0	0	0	0	0	0	4	13	33	11	20	0	0

FOI complaint outcomes²⁴

	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	2023-24	2024-25
s70 – not in jurisdiction	11	17	25	18	10	0	2	2	1	4	31	36	49	85	13
s73 – discretion not to investigate	19	41	58	49	24	0	7	12	9	11	54	74	22	145	90
s73(a)	2	9	1	2	2	0	2	1	0	0	0	0	0	4	4
s73(b)	0	4	8	1	5	0	0	0	0	1	27	54	21	84	25
s73(c)	0	0	0	0	0	0	0	1	0	4	3	0	0	6	2
s73(d)(i)	0	0	0	22	8	0	3	3	2	0	0	1	0	10	6
s73(d)(ii)	7	8	7	0	0	0	0	0	0	0	0	0	0	0	0
s73(e)	6	12	9	0	0	0	0	0	0	0	0	0	0	0	0
s73(f)	2	0	3	1	1	0	0	0	0	0	0	0	0	4	0
s74 – referred Ombudsman	0	0	0	0	1	0	0	1	0	0	12	7	0	21	2
s86 – investigations completed	3	10	26	12	17	0	0	5	0	27	3	42	3	24	0
s86 - no recs made	2	10	26	8	16	0	0	1	0	15	1	12	0	12	0
s86 - recs made	1	0	1	6	1	0	0	4	0	13	2	32	3	14	0
Withdrawn	5	33	40	40	12	0	9	9	12	29	76	74	50	106	17
Total	38	100	149	119	64	0	18	29	22	71	174	223	124	377	122

²⁴ One complaint may have multiple issue outcomes, thus totals do not equal the sum of rows.

Matters on hand by date received

Calendar year received	FOI complaints on hand at 31 Oct-24	Percentage
2023	2	5%
2024	38	95%
Total	40	100%

FOI vexatious applicant declarations**FOI vexatious applicant declarations s89k & s89M**

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Ongoing at period close	4	2	5	1	0	0
Received	4	3	9	2	1	0
Closed	1	5	6	6	2	0

FOI Extension of time notifications and applications

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
EOT applications requiring OAIC decision²⁵						
Requests ongoing at period close	5	26	20	33	28	14
Ave age requests ongoing at period close (business days)	1	2	2	4	4	2
Requests received	1,353	992	1,550	1,678	981	-
FYTD to 31 Oct	-	-	-	-	391	238
% change from PY	72%	-27%	56%	8%	-42%	-40% FYTD
Requests closed	1,363	971	1,556	1,665	986	-
FYTD to 31 Oct					379	252
% change from PY	75%	-29%	60%	7%	-41%	-34% FYTD
Average business days to close	4	4	4	8	6	4
Other EOTs where agreement reached or IC review to be conducted						
Notifications received²⁶	2,800	2,595	3,207	4,683	4,075	-
FYTD to 31 Oct	-	-	-	-	1,228	1,813
% change from PY	-5%	-7%	24%	46%	-13%	48% FYTD
EOTs for IC review or internal review received²⁷	91	122	173	112	206	-
FYTD to 31 Oct	-	-	-	-	64	91
% change from PY	112%	34%	42%	-35%	84%	42% FYTD

²⁵ ss 15AB, 15AC, 54D, 51DA only

²⁶ s 15AA

²⁷ ss 54B and 54T. Only one request has been received for s54B extension of time in 2018-19 financial year.

EOT application request outcomes²⁵

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
s15AB - complex or voluminous	786	507	890	1,182	519	145
Granted	448	361	646	618	290	74
Granted varied	112	73	98	54	69	24
Granted with conditions	0	1	1	0	0	0
Not granted	166	27	59	437	87	32
Notified	0	0	16	0	13	4
Withdrawn	47	35	61	56	37	8
Invalid	13	10	9	17	23	3
s15AC - deemed refusal	492	405	556	385	373	72
Granted	410	335	439	333	205	33
Granted varied	22	25	23	7	43	9
Not granted	44	24	60	13	91	21
Notified	0	0	3	0	19	3
Withdrawn	7	9	13	13	5	1
Invalid	9	12	18	19	10	5
s54D - deemed affirmation	80	57	106	96	87	34
Granted	60	46	84	75	59	18
Granted varied	7	2	10	7	8	4
Not granted	2	6	4	3	10	8
Notified	0	0	1	0	3	0
Withdrawn	0	2	1	5	0	3
Invalid	11	1	6	6	7	1
s51DA-amendment - deemed refusal	5	2	4	2	7	1
Granted	5	2	4	1	6	0
Granted varied	0	0	0	0	1	1
Withdrawn	0	0	0	1	0	0
Total	1,363	971	1,556	1,665	986	252

Legal

FOI Requests

Total number of FOI requests received by the OAIC

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Requests received	235	193	335	335	498	211
Personal	144	121	183	188	274	138
Other	91	72	152	147	224	73
Internal Review	13	17	25	56	14	7
Personal	7	12	14	26	7	3
Other	6	5	11	30	7	4
Total	248	210	360	391	512	218

FOI and administrative requests on hand

Request type	Matters on hand
FOI requests	36
Administrative access	6

Litigation matters

Current litigation matters (OAIC respondent)

Jurisdiction	Federal Court	AAT	High Court	Total
FOI	2	6	1	9
Privacy	18	8		26
Total	20	14	1	35

Consumer Data Right

CDR Enquiries managed by the OAIC

CDR enquiries includes all matters found to be related to CDR, received by telephone, written and in person channels, including from the CDR online complaint tool (cdr.gov.au)

	2020-21	2021-22	2022-23	2023-24	2024-25
Ongoing at period close	0	1	0	0	1
Received	16	40	29	35	16
Finalised	16	39	30	35	15

CDR enquiries closed within 10 working days - target 90%

	2020-21	2021-22	2022-23	2023-24	2024-25
% closed within 10 business days	63%	79%	93%	100%	100%
No. closed within 10 business days	10	31	28	35	15
% closed over 10 business days	38%	21%	7%	0%	0%
No. closed over 10 business days	6	8	2	0	0

CDR Complaints managed by the OAIC

	2020-21	2021-22	2022-23	2023-24	2024-25
Ongoing at period close	0	0	0	1	1
Received	1	13	9	14	3
Finalised	1	13	9	13	3

Outcome	2020-21	2021-22	2022-23	2023-24	2024-25
s26 - Referred to ACCC	0	0	1	0	0
s36 - Not a complaint	0	13	4	9	2
Better dealt with by EDR	0	0	0	1	0
Not CDR Data	0	3	0	2	0
Respondent an individual	0	1	0	0	0
Respondent not a CDR participant	0	9	4	5	3
Unrelated to PSGs/privacy/confidentiality	0	0	0	1	0
s41(1)(a) - No breach	1	0	0	0	0
s41(1)(db) - No response in specified period	0	0	1	2	0
s41(2)(a) - Adequately dealt with - Not Conciliated	0	0	3	2	0
Total	1	13	9	13	3

CDR Contacts received via the CDR Online Complaint Tool

Type	2020-21	2021-22	2022-23	2023-24	2024-25
Enquiry	41	75	125	125	49
Report	3	5	14	18	6
Complaint	17	32	61	95	32
Total	61	112	200	238	87

CDR contacts received via the online complaint tool and referred to ACCC

Type	2020-21	2021-22	2022-23	2023-24	2024-25
Enquiry	32	51	101	100	40
Report	3	1	6	11	1
Complaint	0	0	0	0	0
Total	35	52	107	111	41

1. Complaints are not within ACCC remit – all are triaged to OAIC
2. CDR contacts received via the online complaint tool and referred to ACCC are not entered into the OAIC's Resolve database.

Total CDR contacts received via the online complaint tool and referred to OAIC²⁸

Type	2020-21	2021-22	2022-23	2023-24	2024-25
Enquiry	9	24	24	25	9
Report	0	4	8	7	5
Complaint	17	32	61	95	32
Total	26	60	93	127	46

²⁸ Includes enquiries, reports and complaints that were later assessed to have no CDR relevance and treated as standard enquiries and privacy complaints.

ESTIMATES BRIEF: OTHER**Subject: Current media issues****Type: Report****[May 2024 brief content: [D2024/010437](#)]**

Key details			
When did OAIC learn of matter?			
Origin	Media issues covered in recent months		
Is there an issue in the public domain?	All the issues highlighted below are in the public domain		
Responsible Branch & team	Strategic Communications		
Content author	Andrew Stokes		
Clearance by		Phone	
Brief current at	28 October 2024	Phone	

Brief overview of issues

- The current media issues folder has typically contained a lengthy digest of media articles
- Under this revised approach we are only highlighting key matters that are not contained within other briefs
- Issues that are current and contained in other briefs include: OAIC overall performance; OAIC re-organisation and budget; Grubisa investigation; car technology; inquiries re TikTok and overseas developments; the Patrick FOI case; progress of IC reviews; duration of privacy investigations; progress of privacy reform, including small business exemption; artificial intelligence and Meta.

Recent developments

- Below are extracts from two articles (behind paywall) that may be of interest.

[Sydney Morning Herald: Bunnings keen to roll out facial recognition tech to all its stores \(extract\), 24 November 2024](#)

The chief executive of the Australian Chamber of Commerce and Industry, Andrew McKellar, said the commissioner's ruling would be confusing for businesses.

“The actions of Bunnings point to genuine risk mitigation efforts that have been undone by a technicality,” he said.

“Businesses looking to protect their staff could rightly be confused by the decision. We look forward to a tribunal review outcome which enables clarity for business.”

Capital Brief: Government data breached twice by ‘rogue employees’ in six months, 15 October.

Two of the 44 “malicious or criminal” attacks launched against government agencies were identified as being caused by a rogue employee or “insider threat”.

Documents released under freedom of information laws revealed that both incidents occurred in April. One breach at the Department of Defence impacted one individual, while the other, at the Department of Human Services, affected between 11 and 100 people. Both breaches were deemed to be “malicious or criminal attacks”. But government agencies’ handling of data management has under particular scrutiny in the last year, with concerns that Defence’s internal system — the Personnel Management Keys System (PMKeyS) — allows Defence personnel to access employees' personal information without being traced.

In February, Capital Brief confirmed that several incidents related to the PMKeyS system were under investigation by the OAIC, although these occurred before the period covered in Kind’s latest report.

Australian Financial Review: Small business wants out of privacy laws as data breaches rise 215pc, October 25

About 98 per cent of all businesses would be exempt from new privacy laws under a new definition of small business the Albanese government is being urged to adopt despite a tripling in online account breaches.

The small business lobby is pushing to limit the reach of Labor’s overhaul of the Privacy Act to firms with annual turnover above \$10 million, up from the current threshold of \$3 million.

COSBOA has also won support from shadow attorney general Michaelia Cash in its push for small business to be exempted from a proposed new tort to enable individuals to sue for serious invasions of privacy.

“While small businesses might have been given a temporary reprieve from complex regulation with one hand, with the other hand they will now face substantially elevated legal risks,” Senator Cash said.

“This is a significant new exposure. Every business, big and small, now faces the risk of being sued for misusing information. Class action lawsuits will likely follow.”

Expected next steps/dates

- Please contact the Strategic Communications team if you want full copies of articles.

ESTIMATES BRIEF: OTHER**Subject: Performance measures****Type: Report**

Key details			
When did OAIC learn of matter?	N/A		
Origin	Corporate Plan Performance 2024-25		
Is there an issue in the public domain?	N/A		
Jurisdiction	PGPA Act		
Responsible Branch & team	Corporate Branch, BARD		
Content author	Danyel Harvey	Phone	9942 9406
Clearance by	Brenton Attard	Phone	9942 4046
Brief current at	18 November 2024		

Target	2023-24	2024-25 FYTD (as at 31-Oct-24)
(1.2.1) 80% of privacy complaints finalised within 12 months	78%	65%
(1.2.2) 80% of CIIs finalised within 12 months	67%	100%
(1.2.3) 80% of NDBs finalised within 60 days	85%	84%
(1.2.4) 80% of My Health Record notifications finalised within 60 days	97%	100%
(1.2.5) 80% of IC reviews finalised within 12 months	63%	63%
(1.2.6) 80% of FOI complaints finalised within 12 months	65%	80%
(1.2.7) 90% of written enquiries finalised within 10 working days	97%	45%
(3.1) 90% of recommendations accepted	96%	100%
(4.5) Average call duration less than 6:33	6:33	6:43

SURVEY BASED PERFORMANCE MEASURES
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- Stakeholder survey-based performance measures were introduced with the 2022-23 Corporate Plan to measure the OAIC's effectiveness. The 2022-23 and 2023-24 survey results are summarised below.

Performance Measure	2022-23	2023-24
1.1 – Effectiveness of the OAIC's contribution to the regulation of the Consumer Data Right as measured by stakeholder feedback.	67	71
2.1 – Effectiveness of the OAIC's contribution to the advancement of online privacy protections and policy advice as measured by stakeholder feedback	61	60
3.2 – Effectiveness of OAIC's advice and guidance on FOI obligations and the Information Publication Scheme in supporting government agencies to provide public access to government-held information, as measured by stakeholder feedback	60	56
4.1 – Stakeholder assessment of the extent to which the OAIC's regulatory activities demonstrate a commitment to continuous improvement and building trust	60	63
4.2 – Stakeholder assessment of the extent to which to OAIC's regulatory activities demonstrate collaboration and engagement	58	58
4.3 – Stakeholder assessment of the extent to which the OAIC's regulatory activities are risk based and data driven	51	56

ESTIMATES BRIEF

Budget and resourcing

The 2024-25 Budget resulted in a \$11.1M (26.3 ASL out of 200 in 23/24) net reduction in funding representing a 23% reduction in funding and 13% reduction in ASL. In July 2024 13% of the OAIC’s staff were non-ongoing (payroll (10%)/ contractors (2%)/ casual (1%)). Included in the terminated funding was the funding for the work on privacy activities including work responding to the increased complexity, scale, and impact of notifiable data breaches as well as work around the privacy aspects of social media and online platforms. Digital ID received an injection of \$5.6M under the 24/25 budget. Forward estimates further reduce by terminating measures in 2025-26 reducing overall funding by 34%. The 2023-24 Budget included funding to support the return to the three-Commissioner model. The OAIC applied additional resources to reduce the aged FOI matters during 2022-23 and 2023-24.

FOI Funding

- Refer “Hot Topic Brief - Resourcing and Funding”, for FOI funding background: [D2023/021078](#)

Budget bottom line prior years

- There were operating losses in 4 of the last 7 prior years.

	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023-24
	(\$M)	(\$M)	(\$M)	(\$M)	(\$M)	(\$M)	(\$M)
Cash surplus/(deficit) ¹	(0.4)	(0.7)	0.5	(2.0)	0.6	(3.1)	2.4

- 2017-18 – loss due to internally funding critical projects not known at the time of the budget.
- 2018-19 – loss due to unforeseeable lump sum superannuation contribution of \$0.53M.
- 2020-21 – loss due to COVID-19 pandemic related regulatory work, OAIC’s preparations to change corporate service providers and higher than anticipated legal expenditure.
- 2022-23 – loss due to investigations into major data breaches and extra resource for FOI backlog.
- 2023-24 – surplus (including quarantined litigation funds of \$2.8M) of \$5.2M, underlying operating surplus \$2.4M

OAIC 2023-24 & 2024-25 Funding & Measure Status

Outlined in the HTB

Refer appendices B, C & D for outlines of long term funding history:

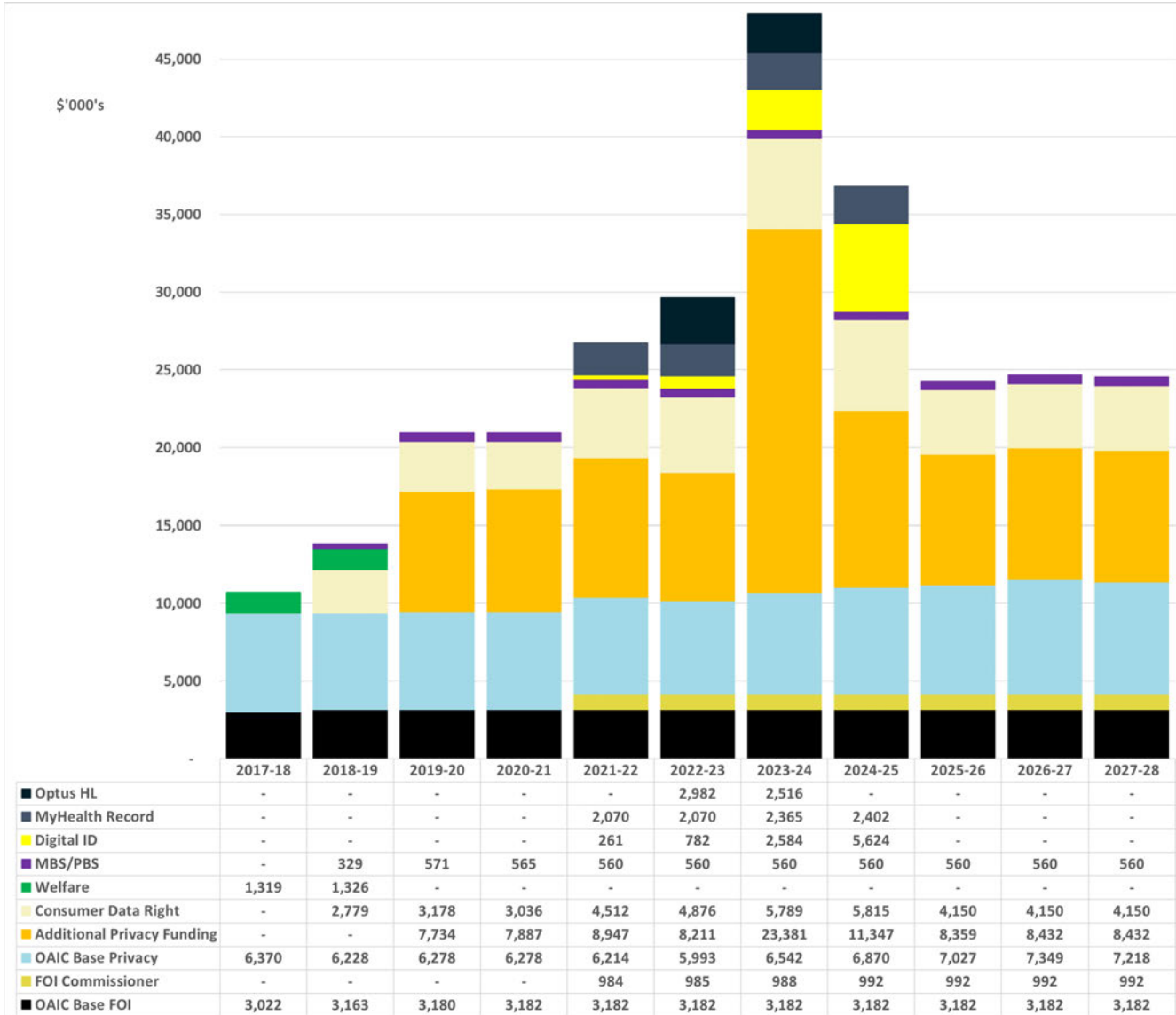
- Appendix B - Historical funding profile & composition.
- Appendix C – Historical appropriation – terminating versus non-terminating.

¹

- Appendix D - Description of funding components.

Overall funding:

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28
Total Departmental Funding	10,711	13,825	20,941	20,948	26,730	29,641	47,907	37,275	25,433	25,989	24,534



Terminating versus non-terminating

- Most of the terminating measures are ongoing obligations for the OAIC.
- The terminating funding at the end of June 2025 relates to:
 - 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.
 - Digital ID funding,
 - Some additional CDR funding, and

- The contingent litigation funding for major investigations.

Internal budget allocation/ Budget by branch

- While undergoing the reorganisation of the OAIC the budget has not been managed at a branch level. Actuals are monitored at a branch level each month while the budget is managed at an agency level.
- The table below sets out the actual YTD spend by branch compared to the prior year.

	23-24 Period 3			24-25 Period 3			Year on Year
	Employee	Supplier	Total	Employee	Supplier	Total	
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Exec	948	39	987	1,247	21	1,268	+ 281
FOI	714	65	779	1,154	64	1,217	+ 438
DR	1,428	11	1,439	1,614	8	1,622	+ 183
RS	1,148	28	1,176	1,085	46	1,131	- 45
DI (6 months)	-	0	-	286	2	289	+ 289
MI	284	73	357	340	9	349	- 8
CORP	1,047	97	1,144	1,116	24	1,139	- 5
LEGAL/INTERNAL	592	0	592	688	-	688	+ 96
LEGAL/EXTERNAL	-	1527	1,527	-	1,194	1,194	- 333
OVERHEAD	-	783	783	-	1,282	1,282	+ 499
	6,161	2,623	8,784	7,530	2,650	10,179	+ 1,395

- The higher YTD position than last year reflects the higher starting point in the current year as the OAIC grew throughout the 23-24 year.
- The cost management during the 24-25 year which reflects the cost reduction strategies to match the reduction in funding is outlined in the below month by month table:

	\$,000	\$,000	\$,000
	Jul-24	Aug-24	Sep-24
Employee cost	(2,802)	(2,433)	(2,317)
Supplier cost	(393)	(444)	(596)
Legal expenses (Non-eligible for s51 funds)	(215)	(109)	(404)
Total Expenses	(3,410)	(2,986)	(3,318)

This shows the steady reduction in employee costs which is a key part of the strategy to realign the budget to the funding available. The supplier and legal costs are in line with the reduction strategy for those categories.

Capital Requirements (for systems review and identified projects)

- The cost to implement the required changes identified through the systems review were estimated at \$5.0M in CAPEX spread over a 2-to-3-year implementation.
- No funding is currently available for CAPEX and as such systems spend is limited to minor maintenance adjustments of existing systems estimated at a cost of \$140K over the 2024-25 financial year, funded from cash flow as available.
- Other capital projects, including the upgrade of office acoustics, have been put on hold waiting for available funds.

Procurement/Contracts

- There are \$2.3M of open non-legal expenditure-based contracts:
- The contracts valued over \$100K are:

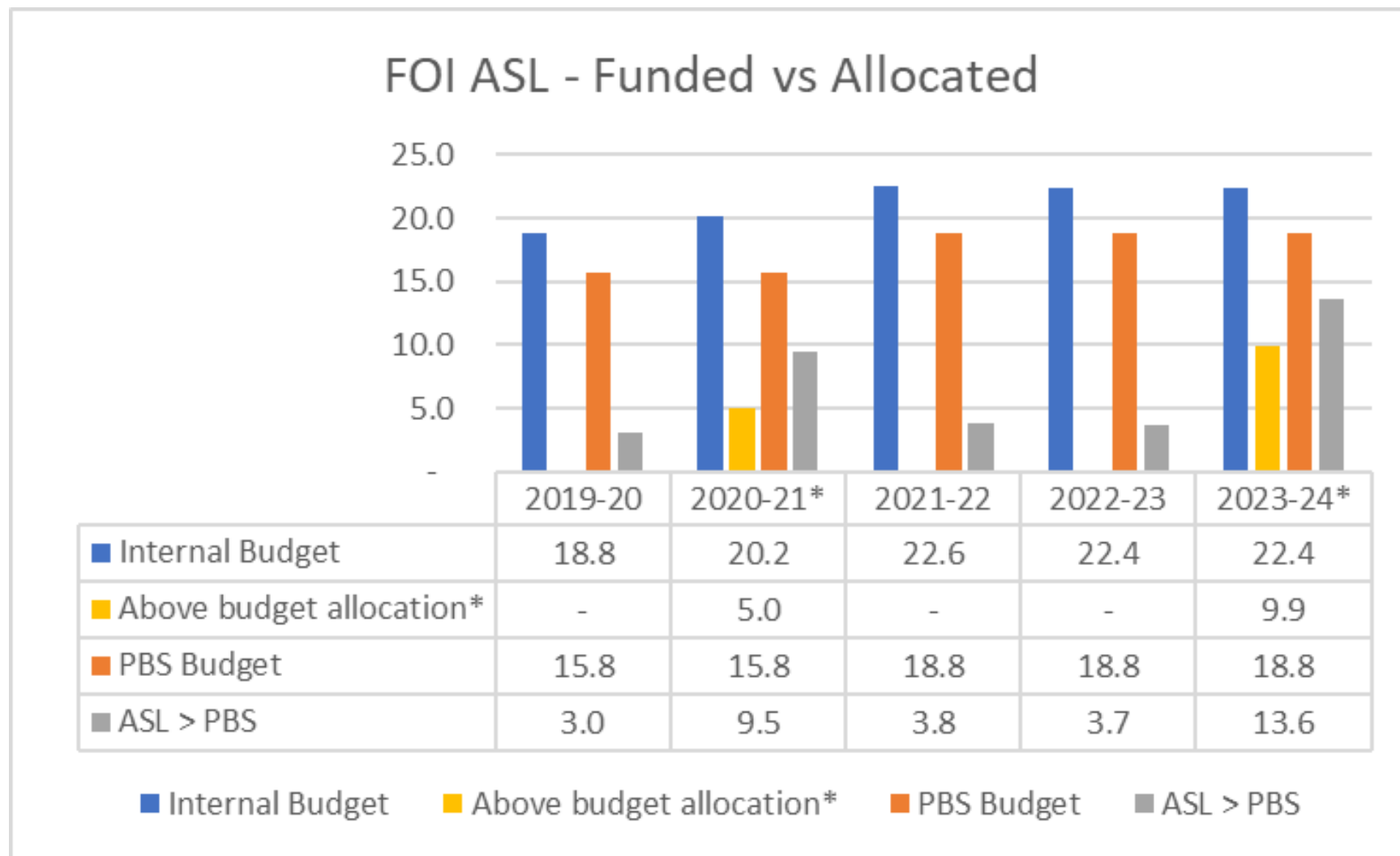
Vendor name	Net price (excl. GST) \$	Remaining Balance (excl. GST) \$	Short Text
DEXUS PROPERTY SERVICES PTY LTD	997,538	665,025	Level 10 Rent Roll 2024-25
DEPARTMENT OF FINANCE	563,801	281,744	SDO MOU Consumption charges 2024-25
RESOLVE SOFTWARE GROUP PTY LTD	204,325	204,325	Resolve licence 1/2/25-31/1/26
RESOLVE SOFTWARE GROUP PTY LTD	194,595	194,595	Resolve licence 1/2/24-31/1/25
DEXUS PROPERTY SERVICES PTY LTD	217,151	144,767	Level 10 Outgoings 2024-25

Travel & Major planned travel

- Total travel cost for YTD 2024-25 \$85K (2023-24: YTD period 3 \$63K, Full Year \$556K)
- Commissioner Kind travel to 46th Global Privacy Assembly in Jersey UK and costs approximately \$13,850

Update 'Current at' date below following each update	Cleared by: Brenton Attard	Action officer: Simon Crone, CFO
Current at: 31/10/24	Phone number: 02 9942 4046	Action officer number: s 47F

Appendix A – Funding and ASL allocation



*Additional funds/ASL were allocated on top of the business-as-usual budget. In 2020-21 \$0.8M/5 ASL and in 2023-24 \$1.5M/9.9 ASL. With the reduction of funding for the 2024-25 year this will need to be reviewed for sustainability and appropriateness.