



Australian Government

**Office of the Australian
Information Commissioner**

Office of the Australian Information Commissioner

Annual Report 2017–18

OAIC

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Our annual report is also available free of charge on our website at
www.oaic.gov.au/annualreport2017-18

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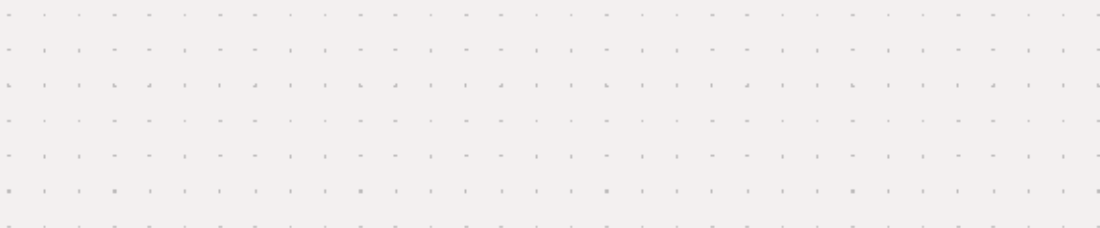
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Design

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Australian Government

Office of the Australian Information Commissioner

The Hon Christian Porter MP

Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney,

I am delighted to provide to you, for presentation to the Parliament, the Office of the Australian Information Commissioner's (OAIC's) Annual Report 2017–18 for the year ending 30 June 2018.

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

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

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

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

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

Yours sincerely,

Angelene Falk

Australian Information Commissioner
Australian Privacy Commissioner

17 September 2018

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Part 1

Overview

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About the OAIC

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

Our key role is to meet the needs of the Australian community when it comes to the regulation of privacy and freedom of information. We do this by:

- Ensuring proper handling of personal information in accordance with the *Privacy Act 1988* (Privacy Act) and other legislation.
- Protecting the public’s right of access to documents under the *Freedom of Information Act 1982* (FOI Act).
- Performing strategic functions relating to information management within the Australian Government, in accordance with the AIC Act.

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

Timothy Pilgrim, PSM, was the Australian Information Commissioner and the Privacy Commissioner during the term of this annual report until his retirement on 23 March 2018. Angelene Falk was appointed as acting Australian Information Commissioner and acting Privacy Commissioner on 24 March 2018 and was appointed by the Governor-General as Australian Information Commissioner and Privacy Commissioner on 16 August 2018.

Purpose

Our Purpose is to promote and uphold privacy and information access rights.

In the 2017–18 Corporate Plan we determined we would be successful if we:

- ✓ Assist businesses and Australian Government agencies to understand their privacy obligations and respect and protect the personal information that they handle.
- ✓ Efficiently and effectively take action against suspected interferences with privacy to improve compliance with the *Privacy Act 1988*.
- ✓ Assist the community to understand and feel confident to exercise their privacy and information access rights.
- ✓ Assist Australian Government agencies to understand their FOI obligations and respect and promote access to government information.
- ✓ Efficiently and effectively carry out our regulatory functions under the *Freedom of Information Act 1982*.



Commissioner’s review

This has been a year of great achievement,
continuity and change for the OAIC.

On 23 March 2018 we said farewell to Timothy Pilgrim, who retired from the positions of Australian Information Commissioner and Privacy Commissioner after contributing so much to the privacy, FOI and information management landscape and who skilfully navigated the OAIC through considerable change. The achievements in this report reflect Timothy's dedication and vision. Over more than 20 years Timothy upheld and promoted the values of privacy protection and access to government held information through his work.

I took over the roles as acting Australian Information Commissioner and acting Privacy Commissioner from 24 March 2018 and was appointed as Australian Information Commissioner and Privacy Commissioner on 16 August 2018 for a three year term.

My acting appointment coincided with a time of heightened community awareness of privacy, both domestic and global. Domestic and global regulatory developments are requiring greater transparency and accountability of personal information handling, and the community is increasingly expecting business and government to meet that challenge.

The European Union General Data Protection Regulation (GDPR) came into effect in May 2018, impacting Australian organisations that operate in the European market. Like Australia's Notifiable Data Breaches (NDB) scheme and the Australian Government Agencies Privacy Code, the requirements concentrate on enhancing the accountability and transparency of personal information handling practices.

Increased community awareness is reflected in the demand for the OAIC's services, with a general growth in work across the OAIC's regulatory activities in both privacy and information access. We have also continued to create efficiencies and increase our productivity, while implementing a significant new area of work with the NDB scheme commencing on 22 February 2018. This is a testament to the OAIC's ability to adapt and respond, and to the skill, commitment and dedication of staff. The NDB scheme requires all entities with obligations to secure personal information under the Privacy Act to notify individuals whose personal information is involved in a data breach that is likely to result in serious harm. Entities must also notify the OAIC.

The NDB scheme is a key transparency measure, reinforcing organisations' accountability for personal information security. In the period to 30 June 2018 we received 305 data breach notifications under the NDB scheme and 174 voluntary notifications. By comparison, in the 2016–17 financial year, the OAIC received 114 voluntary data breach notifications.

We have established a framework to receive and respond to NDB notifications. We are releasing quarterly reports, which provide statistical information on notifiable data breaches occurring in Australia and the reasons why they happen. Understanding causes will help everyone to take steps to mitigate against occurrences in the future. We will also continually enhance our processes and build on the guidance we provide to organisations and agencies.

In 2017–18 the OAIC received 2,947 privacy complaints, an 18% increase on last year, and we closed 2,766, an 11% increase on privacy complaints closed compared to last financial year. We received 801 requests for Information Commissioner (IC) review under the *Freedom of Information Act 1982* (FOI Act), a 27% increase on last year, and closed 610, an increase of 18% on 2016–17. Our team has handled 19,407 privacy enquiries and 1,931 freedom of information (FOI) enquiries, either in writing, by phone or in person. This represents an overall increase of 13% when compared to last financial year.

We continued to implement efficiencies in our regulatory activities to address these increases, and to work effectively within the resources available. The average time taken to close a privacy complaint was 3.7 months this year, compared to 4.7 months in 2016–17. Regarding FOI — notwithstanding the increase in the number of IC review applications received, we were able to finalise 84% within 12 months, exceeding our target of 80% completed within 12 months. The average time taken to close an IC review was 6.7 months, a slight increase on last year's average time of 6.2 months.

Our advisory, guidance and monitoring expertise is also highly sought after. We provided more advice across government and the economy than ever before. We have also worked proactively to help agencies to prepare for the commencement of the Australian Government Agencies Privacy Code on 1 July 2018, including by providing detailed guidance, training and resources to support agencies to take a privacy by design approach to handling personal information. The Code will help ensure a consistent standard of personal information governance in Australian Government agencies.

Over the past 12 months there have also been a number of significant new proposals from government that impact the data landscape and the regulatory role of the OAIC. We have engaged with the proposed Consumer Data Right, helping to ensure that the legislative framework, standards and processes are designed in a way that support privacy and data security, for the benefit of all individuals who wish to use the scheme. The Australian Competition and Consumer Commission's inquiry into digital platforms also raises issues of significant interest to the OAIC in regulating personal information handling in the online environment. We have also continued to engage with the Australian Government's proposal to mandate comprehensive credit reporting, to ensure respect for privacy and an efficient credit reporting system. Ahead of that proposed change, we reviewed and varied the *Privacy (Credit Reporting) Code 2014* (CR Code), a legislative instrument, which supports part IIIA of the Privacy Act which regulates the handling of consumer credit reporting information in Australia.

In relation to access to government held information, we have continued to assist Australian Government agencies to take a proactive approach to publishing the information that they hold. This year we conducted a survey of all agencies subject to the FOI Act, to review compliance with the Information Publication Scheme (IPS) set out in that Act. A report on this work will be published in 2018–19, complemented by updated guidance for agencies on providing administrative access outside of the FOI Act. We have also published an FOI regulatory action policy, which further outlines our approach to undertaking IC reviews, FOI complaints and Commissioner initiated FOI investigations.

And in work that traverses the OAIC’s information management, FOI and privacy functions, we continue to participate in the Open Government Forum, and our work on the development of Australia’s next Open Government National Action Plan will continue into 2018–19. We have also continued to engage with the Government’s response to the Productivity Commission’s Data Availability and Use report, to support the better use of government held information while protecting privacy.

The next 12 months will raise new challenges for privacy and access to information regulation. The OAIC continues to adapt and develop our capabilities in order to prevent, detect and remedy across a

changing regulatory landscape. Working with our stakeholders across the economy, government and with domestic and international regulators will be critical to our success.

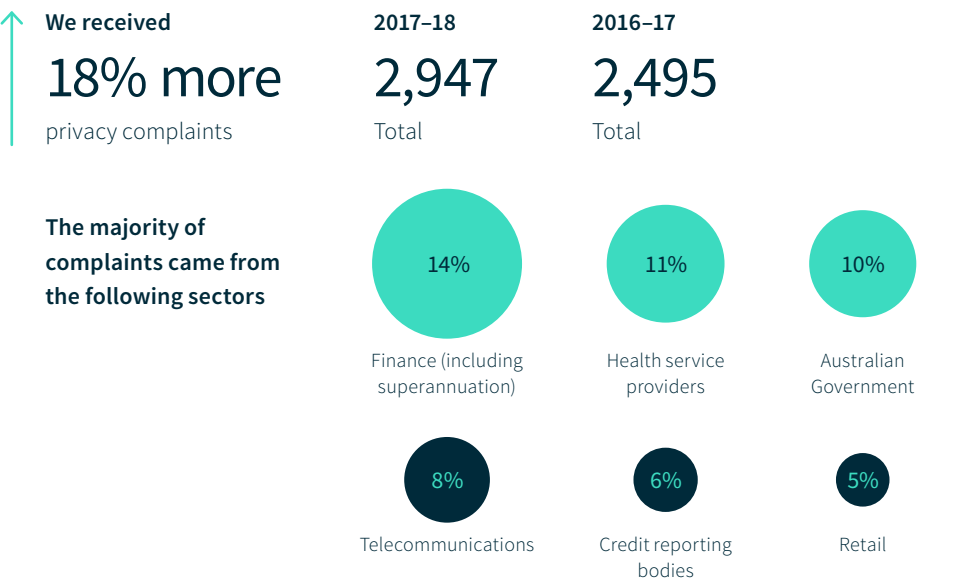
Looking back over the past year and to the future, it is the staff of the OAIC who are committed to delivering solutions for the Australian community every working day who make a difference. Ultimately it is their achievements that are outlined in this report.

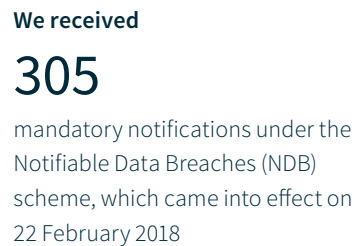
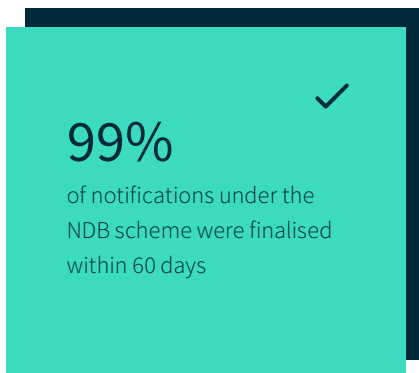
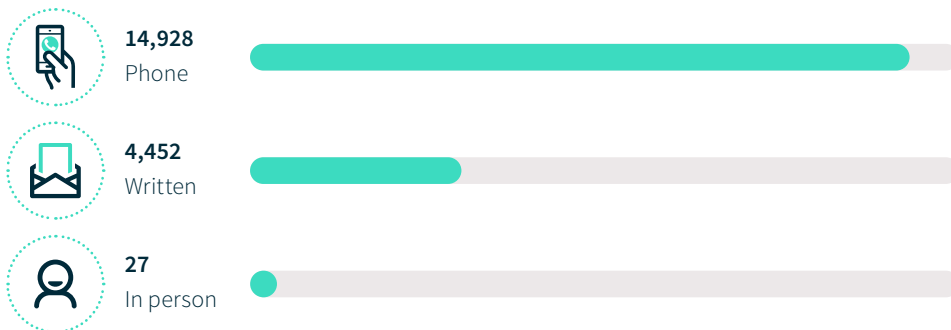
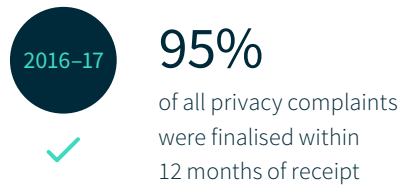
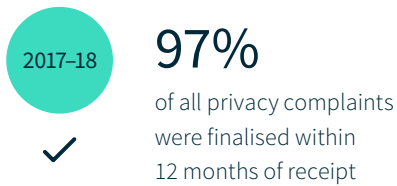


Angelene Falk
Australian Information Commissioner and
Privacy Commissioner
20 August 2018

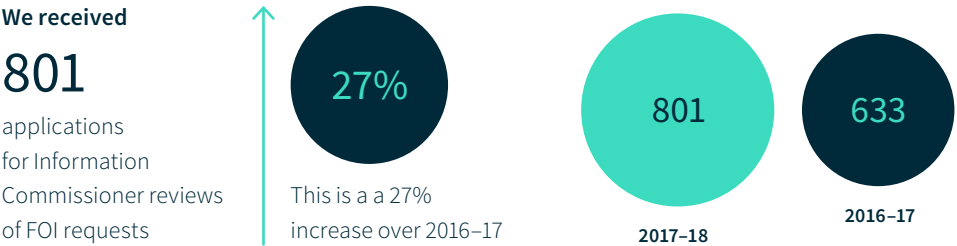
Our year at a glance

Privacy highlights





FOI highlights



In 2016-17 we finalised 86% of applications
for an Information Commissioner review within 12 months of receipt

**The top five agencies involved in
Information Commissioner reviews were:**



- 1 Department of Home Affairs (154)
- 2 Department of Human Services (119)
- 3 Australian Federal Police (54)
- 4 Department of Defence (39)
- 5 Australian Taxation Office (28)



We handled

1,931

FOI enquiries which is a 6% decrease on last year

6%



1,339
Phone



584
Written



8
In person



We received

72% more

FOI complaints

62

2017-18

36

2016-17



Average time taken to
finalise a complaint was

5.8 months

compared to 3 months
in 2016-17



83%

of all FOI complaints
were finalised within
12 months of receipt
compared to 100%
in 2016-17

Our structure

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

The Australian Information Commissioner exercises all functions under the AIC Act including all the privacy and FOI functions.

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

Timothy Pilgrim was the Australian Information Commissioner and Australian Privacy Commissioner until his retirement on 23 March 2018. Angelene Falk was appointed as acting Australian Information Commissioner and acting Privacy Commissioner from 24 March 2018 and appointed by the Governor-General to the roles of Australian Information Commissioner and Privacy Commissioner on 16 August 2018.

Angelene Falk

Angelene has held senior positions in the OAIC since 2012. This includes her role as Deputy Commissioner since 2016.

Over the past decade, Angelene has worked extensively with Australian Government agencies, across the private sector and internationally, at the forefront of addressing regulatory challenges and opportunities presented by rapidly evolving technology and potential uses of data. Her experience extends across industries and subject matter, including data breach prevention and management, data sharing, credit reporting, digital health and access to information.

Angelene holds a Bachelor of Laws with Honours and a Bachelor of Arts from Monash University and a Diploma in Intellectual Property Law from Melbourne University.

Support to the Commissioner

The Commissioner is supported by an Executive team of three substantive SES positions, and staff who are experts in their field. The OAIC is structured into two main Branches — Dispute Resolution and Regulation and Strategy.

Generally, the Dispute Resolution Branch is responsible for case management and resolution of privacy complaints, FOI Information Commissioner reviews, Commissioner initiated privacy and FOI investigations and the public enquiries line. The Regulation and Strategy Branch provides guidance, examines and drafts submissions on proposed legislation, conducts assessments, and provides advice on inquiries and proposals that may have an impact on privacy.

Communication and collaboration

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

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

Our networks

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

Privacy Professionals' Network

The Privacy Professionals' Network (PPN) has continued to grow this year, from 1,235 to 3,442 members. The engagement from PPN members is high, with the majority of PPN events run in 2017–18 fully subscribed. Approximately 70% of PPN members are from the private sector, with the remainder from the public sector and not-for-profit organisations. Members have the opportunity to hear from experts, listen to case studies, and network with other members at PPN events.

Information Contact Officer Network

The Information Contact Officer Network (ICON) provides news, updates and information about FOI. ICON has continued to engage its members with monthly updates and events. In 2017–18 ICON grew from 458 members to 538. We held an ICON information session in Canberra in March 2018, which explored ongoing and emerging challenges in FOI administration and included an expert panel discussion.

Consumer Privacy Network

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

- Australian Communications Consumer Action Network.
- Australian Privacy Foundation.
- Consumer Action Law Centre (CALC).
- Consumer Credit Law Centre SA (CCLCSA).
- Consumers Health Forum of Australia.
- Electronic Frontiers Australia Inc.
- Financial Rights Legal Centre Inc (NSW).
- Internet Australia.
- Legal Aid NSW.
- Legal Aid Queensland.
- The Foundation of Young Australians.
- National LGBTI Health Alliance.
- Federation of Communities' Councils of Australia.
- National Mental Health Consumer and Carer Forum.

External networks

Privacy Authorities Australia

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

Asia Pacific Privacy Authorities

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

Global Privacy Enforcement Network

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

International Conference of Data Protection and Privacy Commissioners

The largest and longest standing network for data protection and privacy authorities, the International Conference of Data Protection and Privacy Commissioners brings together organisations from around the world to provide leadership at international level in data protection and privacy.

Asia-Pacific Economic Cooperation

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

Common Thread Network

This network brings together data protection and privacy authorities from Commonwealth countries.

Association of Information and Access Commissioners

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

The International Conference of Information Commissioners

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

Events

This year, OAIC Executive members delivered more than 50 speeches to audiences from the public, private, community, health and education sectors.

We held two Privacy Professionals' Network (PPN) events this year. Both events focused on educating businesses and agencies about the Notifiable Data Breaches (NDB) scheme and the European Union's General Data Protection Regulation (GDPR). The first event was held in Adelaide. Co-hosted with Deloitte, this was the first in-person engagement with Adelaide based PPN members and provided an opportunity for members to talk directly to the OAIC. In March, the OAIC travelled to Brisbane to discuss the first few weeks of operation of the Notifiable Data Breaches scheme at a PPN event co-hosted by the OAIC and Ashurst.

As part of our commitment to assisting Australian Government agencies move towards a best practice approach to privacy governance, we also held an Australian Government Agencies Privacy Code seminar in Canberra. This event provided an overview of the requirements of the Code, and highlighted the range of resources available to support agencies. It was open to Australian Government agency staff at all levels.

47th Asia Pacific Privacy Authorities Forum

In July 2017, we hosted the 47th Asia Pacific Privacy Authorities (APPA) Forum at the International Convention Centre in Sydney. More than 45 representatives from 17 APPA member authorities attended the meeting. Chaired by the Australian Information and Privacy Commissioner, APPA members and invited guests discussed interoperability and identifying global and domestic synergies for regulatory guidance and enforcement activities in the Asia Pacific.

Key topics discussed over the two day meeting included de-identification, the European Union's GDPR and data breach notifications. APPA members complimented the compelling agenda and content of the forum.

Data + Privacy Asia Pacific Conference

Immediately following the APPA Forum, we held a conference entitled Data + Privacy Asia Pacific. The conference was held to provide the Australian business community with the opportunity to hear from the region's regulators and to broaden the conversation to incorporate data and privacy experts. There were 274 attendees. A highlight of the conference was the opening session on ethical data stewardship which brought together a rare panel of global expertise in data and ethics; Australia's Dr Simon Longstaff, Executive Director of The Ethics Centre, was joined by Facebook Deputy Chief Privacy Officer, Rob Sherman, and leading academic, Peter Cullen from the Information Accountability Foundation. Feedback from attendees was overwhelmingly positive; the average rating for the overall event experience was 4.25/5.

Community outreach and engagement

We hosted a free public panel discussion at the University of Adelaide, which explored questions surrounding ethics, media and privacy, and a Queensland University of Technology debate which asked the question 'Is privacy still relevant in the modern age?'. The University of Technology Sydney co-hosted 'Privacy as a career' event was oversubscribed, with law and IT students keen to hear from privacy and cyber security professionals.

An additional focus for this year was a series of 'grass roots' community engagement events. For example we exhibited at the Sydney Disability Expo, where information regarding access to health information was popular.

International

OAIC representatives spoke at the following international events:

- International Conference of Data Protection and Privacy Commissioners in Hong Kong.
- International Conference of Information Commissioners in Manchester, England.
- APPA 48 in Vancouver, Canada.
- APPA 49 in San Francisco, United States.
- GPEN workshop in Israel.

Privacy Awareness Week 2018

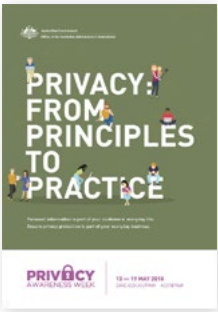
Privacy Awareness Week (PAW) is an annual initiative of the Asia Pacific Privacy Authorities forum. It is held every year to promote and raise awareness of privacy issues and the importance of protecting personal information.

In 2018, PAW ran from 13 to 19 May, promoting the theme ‘Privacy: from principles to practice’. The theme encouraged organisations to ensure that privacy protection is part of their everyday business. This message was supported by a digital campaign that directed businesses, agencies and consumers to useful resources and the PAW website.

Tied into the PAW activities was the recognition of 30 years of the Australian Privacy Act. Communications focused on highlighting the evolution of the Act, along with technology and culture, through comparison social icons and a ‘30 years of the Privacy Act’ timeline.

Throughout PAW, an innovative program of events allowed us to engage with a variety of sectors and the community. These events included a sold out business breakfast, attended by 154 representatives from business and government, and a community engagement event, where more than 1,000 commuters were informed about the importance of knowing their credit

history. The week was supported by 360 ‘supPAWters’, who signed up to promote the importance of good privacy practice to their consumers and internally.



PAW snapshot

The success of PAW resulted in:



‘As we reflect on this 30th anniversary of the Australian Privacy Act, it’s clear that the significant role privacy and data protection plays in businesses, government agencies, and for individuals, has rapidly evolved in just a few short decades. In 2018, privacy and data protection must be a central part of the way you do business.’

Angelene Falk, then acting Australian Information Commissioner and acting Privacy Commissioner, in her opening speech for the Privacy Awareness Week 2018 Business Breakfast.

Webinars

We hosted a webinar on 21 November 2017 to help agencies and business to prepare for the commencement of the NDB scheme. Around 1,170 people viewed or listened to the webinar live. This included registrants from 10 countries, as well as Australia. The webinar is available on our website and as at 30 June 2018 had been viewed more than 2,000 times.

Another webinar was held on 15 May 2018 to launch our new new interactive Privacy Management Plan tool for Australian Government Agencies. We had 206 registrations for this event. The webinar is available to view on our website.

Media

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

In 2017–18 we continued to adopt a strategic and proactive approach to disseminating information and raising awareness, resulting in a strong media presence across a variety of channels.

Media enquiries increased by 24% (317 in 2017–18 compared to 255 in 2016–17). These have been from a mixture of mainstream, business and digital publications.

Social media



Twitter

[#dataprivacy17](#) trended as high as number two during the Data + Privacy Asia Pacific conference in July 2017.


[#2018PAW](#) trended to number one on the launch of Privacy Awareness Week 2018.



Facebook

Raised awareness of the Notifiable Data Breaches scheme with an estimated 428,000 Australians, through a paid Facebook consumer campaign.

2



Part 2

Performance

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Our performance statement

Introduction

I, Angelene Falk, as the accountable authority of the Office of the Australian Information Commissioner, present the 2017–18 annual performance statements of the Office of the Australian Information Commissioner, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act). In my opinion, these annual performance statements are based on properly maintained records, accurately reflect the performance of the entity, and comply with subsection 39(2) of the PGPA Act.

Overall performance

In 2017–18 we were working to achieve 35 Performance Measures as outlined in the OAIC Corporate Plan 2017–18. We met the target for 27 of these Performance Measures, five we did not achieve and three were not relevant in this reporting cycle. We:

- Promoted and upheld privacy rights — by achieving 21 of 25 Performance Measures.
- Promoted and upheld information access rights — by achieving nine of 10 Performance Measures.

We achieved all of our key deliverables for the year:

Promote and uphold privacy rights

- Developed and implemented the Australian Public Service Privacy Governance Code and supporting training and resources.
- Prepared for the implementation of the Notifiable Data Breaches scheme in February 2018.
- Hosted the Asia Pacific Privacy Authorities meeting and the Data + Privacy Asia Pacific national conference.
- Trialled an early resolution process to assist with more efficient processing of privacy complaints.
- Conducted targeted privacy assessments in areas such as national security, identity management, digital health and the Enhanced Welfare Payment Integrity data-matching program.
- Celebrated the 30th anniversary of the commencement of the *Privacy Act 1988*.
- Reviewed the *Privacy (Credit Reporting) Code 2014*.

Promote and uphold information access rights

- Updated tools and guidance for Australian Government agencies to assist them to review their compliance with the FOI Act.
- Developed and published an FOI regulatory action policy that outlines how we exercise our powers in relation to IC reviews, FOI complaints and Commissioner initiated FOI investigations.
- Conducted a campaign for Right to Know Day 2017.

Results

Our performance is measured against Activities as outlined in the Corporate Plan 2017–18. Performance Measures marked with an asterisk were also performance targets in the OAIC’s 2017–18 Portfolio Budget Statement.

Privacy Performance Measures

Response to Corporate Plan Activity 1.1 — Develop the privacy management capabilities of businesses and Australian Government agencies and promote privacy best practice

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.1.1 The OAIC applies a risk-based, proportionate approach to facilitate compliance with privacy obligations and promote privacy best practice	Yes	<ul style="list-style-type: none">▪ We regularly engage with business and Australian Government agencies, including through the provision of advice and guidance on how to comply with the Privacy Act and deliver privacy best practice.▪ In the past year we have developed two suites of resources to assist entities in implementing their new obligations under the Notifiable Data Breaches scheme, and the <i>Privacy (Australian Government Agencies — Governance) APP Code 2017</i>.▪ We also released other guides on key privacy issues, such as the in-depth Guide to Data Analytics which assists entities to achieve a high standard of privacy protection in line with increasing community expectations, while maximising the value of data held.
1.1.2 Guidance and educational materials are amended to incorporate learnings from regulatory activities such as assessments and investigations	Yes	<ul style="list-style-type: none">▪ We regularly update our guidance and education materials to ensure currency and relevance.▪ For example, in the past year we updated our guidance on de-identification to ensure relevance on this high-profile topic and to incorporate learnings from a range of regulatory activities.

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.1.3 Regular dialogue and consultation with businesses and Australian Government agencies is undertaken	Yes	<ul style="list-style-type: none"> We engage regularly with businesses and Australian Government agencies, including through the provision of advice on a wide range of matters such as the Australian Government's Public Data Agenda, the new Consumer Data Right scheme, changes to the My Health Record system, review and variations of the <i>Privacy (Credit Reporting) Code 2014</i>, and the proposed introduction of mandatory comprehensive credit reporting.
1.1.4 The number of participating partners for Privacy Awareness Week is increased	No	<ul style="list-style-type: none"> This year there were 360 participating partners for Privacy Awareness Week, just below our target of 370.

Response to Corporate Plan Activity 1.2 — Manage data breach notifications

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.2.1 80% of data breach notifications finalised within 60 days*	Yes	In meeting this target we: <ul style="list-style-type: none"> Finalised 99% of notifications under the Notifiable Data Breaches (NDB) scheme, in operation from 22 February 2018, within 60 days. Finalised 97% of voluntary data breach notifications (DBNs) within 60 days. Closed 33% more voluntary DBNs than in 2016–17. Managed this alongside a 53% increase in voluntary DBNs received compared to 2016–17. Finalised voluntary DBNs within an average of 22.9 days, compared to 29.2 days in 2016–17.

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.2.2 80% of My Health Records data breach notifications finalised within 60 days*	Yes	In meeting this target: <ul style="list-style-type: none"> ▪ We finalised 100% of My Health Records data breach notifications received in 2017–18 within 60 days.
1.2.3 Guidance and support tools for the Notifiable Data Breaches scheme are published	Yes	In meeting this target, we: <ul style="list-style-type: none"> ▪ Published 'Data breach preparation and response — A guide to managing data breaches in accordance with the <i>Privacy Act 1988</i> (Cth)'. This resource includes best practice advice on creating a data breach response plan and responding to a data breach, as well as specific information on compliance with the NDB scheme. ▪ Published resources for individuals who have received a data breach notification, with the aim of providing information about complaint rights and the steps individuals can take to reduce the chances of experiencing harm as a result of a data breach. ▪ Recorded and published an interactive webinar on the requirements of the NDB scheme, with case studies and frequently asked questions.
1.2.4 Statistics on data breach notifications are published to inform the community about the operation of the data breach notification scheme	Yes	In meeting this target: <ul style="list-style-type: none"> ▪ We published the first quarterly report on the operation of the NDB scheme. This report included key statistics on the number of notifications received, the reported sources of data breaches, the top five sectors reporting data breaches under the scheme and the kinds of personal information affected.

Response to Corporate Plan Activity 1.3 — Conduct Commissioner initiated investigations

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.3.1 80% of CII's finalised within 8 months*	No	<ul style="list-style-type: none"> ▪ This target was not met, with 72.2% of privacy Commissioner initiated investigations (CII's) finalised within 8 months. ▪ This reflects the complexity of the privacy CII's finalised during 2017–18, which includes investigations into Australian Red Cross Blood Service, Precedent Communications Pty Ltd, and the Department of Health. ▪ In these matters, the desire for a timely outcome was balanced against the need to comprehensively consider the matters investigated, in line with community expectations and the public interest. ▪ The OAIC continues to improve efficiencies in how privacy CII's are progressed to ensure timely outcomes.
1.3.2 CII's result in improvements in the privacy practices of investigated entities	Yes	<ul style="list-style-type: none"> ▪ The OAIC achieved this measure by accepting enforceable undertakings from three respondents in 2017–18 (Australian Red Cross Blood Service, Precedent Communications Pty Ltd, and the Department of Health). ▪ These enforceable undertakings set out steps that the respondent agreed to take to address concerns raised by the OAIC in its CII. ▪ Implementation of these steps by the respondents led to changes in practices relating to improvement in privacy policies and procedures within those entities.
1.3.3 CII outcomes and lessons learnt are publicly communicated	Yes	<p>The OAIC achieved this measure by:</p> <ul style="list-style-type: none"> ▪ Publishing privacy CII reports with our findings in relation to the Australian Red Cross Blood Service, Precedent Communications Pty Ltd investigations and the Department of Health investigation. ▪ Publishing the enforceable undertakings accepted from the Australian Red Cross Blood Service, Precedent Communications and the Department of Health. ▪ Publishing media releases on the OAIC's website about the conclusion of these investigations and lessons learnt. ▪ Communicating the outcomes of these CII's in speeches and presentations by OAIC Executive and staff.

Response to Corporate Plan Activity 1.4 — Resolve privacy complaints

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.4.1 80% of privacy complaints finalised within 12 months*	Yes	<p>In meeting this target, we:</p> <ul style="list-style-type: none">▪ Finalised 97% of all privacy complaints within 12 months of receipt.▪ Closed 11% more privacy complaints than in 2016–17.▪ Reduced the average time to close a privacy complaint to 3.7 months.▪ Managed this alongside an 18% increase in the number of privacy complaints received in 2017–18.▪ Used our early resolution pilot to contribute to the efficient processing of privacy complaints. <p>We ensured the quality of our privacy complaint handling process by:</p> <ul style="list-style-type: none">▪ Handling privacy complaints in line with our Privacy regulatory action policy and Guide to privacy regulatory action.▪ Undertaking regular staff training including: providing training with assistance from external trainers on decision writing, statutory investigation and conciliation, managing unreasonable complainant conduct, plain English language training and leadership training. Several staff also undertook Resolution Institute mediation training, and a number were accredited as mediators under the NMAS (National Mediator Accreditation Standards).▪ Enabling staff to participate in complaint handling networks and events, including the Complaint Handlers Information Sharing and Liaison seminars, the International Association of Privacy Professionals Australia New Zealand (iappANZ) conference and Privacy Awareness Week activities.▪ Meeting regularly with staff to discuss matters of significance across the teams and to ensure consistency of decision making. <p>The ‘Resolving complaints’ section from page 55 provides case studies that demonstrate the quality of our complaint resolution, and information about the initiatives we put in place in 2017–18 to ensure the continued timeliness of our complaints resolution.</p>

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.4.2 Complaint handling service is promoted to the community	Yes	<p>In meeting this target, we:</p> <ul style="list-style-type: none">▪ Undertook the Australian Community Attitudes to Privacy Survey in 2017, which helped us better understand the concerns of the community.▪ Engaged with the community to promote our complaint handling service by:<ul style="list-style-type: none">— Coordinating a consumer credit reporting education event with the Australian Retail Credit Association’s CreditSmart consumer education team in May 2018.— Promoting OAIC services at the Sydney Disability Expo in May 2018.— Promoted our complaint handling role in external speaking engagements.— Recorded an increase of views of our ‘How do I make a privacy complaint?’ webpage by 22% compared to 2016–17, indicating an increased community awareness of our complaint handling service.

Response to Corporate Plan Activity 1.5 — Conduct privacy assessments

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.5.1 Assessments are completed in accordance with the schedule developed in consultation with the assessment target	No	<ul style="list-style-type: none">▪ The information review and fieldwork stages of privacy assessments were generally completed in accordance with a schedule developed in consultation with the business or agency being assessed, however the finalisation of assessment reports was not completed on schedule in all cases.▪ We will continue to improve our assessment reporting process in the next financial year and work with the business or agency being assessed to assist them to finalise responses to draft assessment reports.

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.5.2 Monitoring and compliance approaches are coordinated with the business and operational needs of the assessment targets	Yes	<ul style="list-style-type: none"> ▪ We undertook professional, independent and systematic assessments in line with our Privacy regulatory action policy and our Guide to privacy regulatory action. ▪ We engaged with and provided preliminary briefings to the business or agency being assessed prior to formally commencing an assessment. This is to clarify the OAIC's expectations, and to develop a schedule that recognises the operational needs of the business or agency being assessed. ▪ An example of how we met this measure is our assessment of Trulioo, a Canadian organisation. We conducted the assessment via video conference across multiple days to accommodate the time difference.
1.5.3 High proportion of recommendations accepted by assessment targets	Yes	<ul style="list-style-type: none"> ▪ 100% of recommendations were accepted by the business or agency being assessed. ▪ The identification of privacy risks and resulting recommendations are proactively and openly communicated by the OAIC throughout assessments to promote discussion about how the business or agency being assessed can mitigate those risks.
1.5.4 Key assessment outcomes and lessons learnt are publicly communicated where appropriate	Yes	<ul style="list-style-type: none"> ▪ We published privacy assessment reports on our website in full or with minimal redactions where appropriate. ▪ We published summary reports to communicate the outcome of assessments that involve confidential material. For example, we published a summary report of our assessments of information disclosures to law enforcement agencies at Telstra, Optus, Vodafone and iiNet.

Response to Corporate Plan Activity 1.6 — Provide a privacy public information service

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.6.1 90% of written enquiries are finalised within 10 working days*	No	Target not met: <ul style="list-style-type: none"> 74% of written privacy enquiries were finalised within 10 working days. Enquirers were notified of any delay at the time. This represents a decline in the 2016–17 response rate of 78% finalised within 10 working days. An increase in the complexity and volume of enquiries, as well as staff turnover affected our ability to meet this target in 2017–18. See the ‘Enquiries’ section on page 48 for more information.
1.6.2 New community, legal and other networks are identified for targeted promotion of the public information service	Yes	Target met: <ul style="list-style-type: none"> The OAIC promoted its information services for privacy related matters through outreach activities and community events, social media, in media statements and on our website. In 2017–18, this included attending the Sydney Disability Expo, and holding a community stall during Privacy Awareness Week to promote individuals’ right to access their credit files and to answer questions about our services. The OAIC also arranged staff training by the Federation of Ethnic Communities’ Council of Australia about how to better engage with culturally and linguistically diverse communities. Privacy determinations, resources and updates were highlighted for privacy professionals and members of the public in our regular OAICnet and Privacy Professionals’ Network email newsletters.

Response to Corporate Plan Activity 1.7 — Promote awareness and understanding of privacy rights in the community

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.7.1 Increase in media and social media mentions about privacy rights	Yes	<ul style="list-style-type: none">▪ In 2017–18 there were 317 media mentions generated by media enquiries; an increase of 24% when compared to the 255 media mentions in 2016–17.▪ There were 2,851 online media mentions and 4,400 social media mentions of privacy rights and the OAIC.
1.7.2 Awareness and understanding about privacy rights and the role of the OAIC is improved	Yes	<ul style="list-style-type: none">▪ The large number of media and social media mentions reported above demonstrates a strong awareness and understanding of privacy rights in the community.▪ This is supported by external consumer research undertaken throughout the year. For example, the Consumer Policy Research Centre’s 2018 Consumer data & the digital economy report showed that 67% of Australians reported reading a privacy policy/terms and conditions for one or more services/products they signed up to in the past 12 months. This is compared to the finding in the OAIC’s 2017 Australian Community Attitudes to Privacy Survey that 61% of people do not regularly read online privacy policies.▪ The 18% increase in the number of privacy complaints and 16% increase in the number of privacy enquiries that we received in 2017–18 indicates a growing awareness of the role of the OAIC.

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.7.3 Increase in attendance numbers and positive feedback from public facing events	Yes	<ul style="list-style-type: none"> ■ In 2017–18, the OAIC focused on the July Data + Privacy Asia Pacific conference as our major public facing event. The conference had 274 attendees. The average rating for the quality of session content was 4.42/5, and the average rating for the overall event experience was 4.25/5. ■ The OAIC's NDB scheme webinar on 21 November 2017 was viewed live by 1,170 people. This included registrants from 10 countries, as well as Australia. The webinar is available on our website and as at 30 June 2018 had been viewed more than 2,000 times. ■ The OAIC's showcase public facing event during Privacy Awareness Week — the business breakfast — was attended by 154 attendees. Extra tickets were released after the event sold out early, with a substantial waitlist. ■ The OAIC held a number of other small public facing events throughout 2017–18, including a Privacy as a Career event at the University of Technology Sydney, and a debate at the Queensland University of Technology.
1.7.4 The OAIC's website is accessible for individuals and contains targeted content about privacy rights	Yes	<ul style="list-style-type: none"> ■ The OAIC's website contains a number of web accessibility improvements and we continually look for further ways that these can be enhanced. ■ For example, in 2017–18 we introduced a 'mega-menu', which assists users to find content more easily. We also introduced ReadSpeaker, which is a naturalistic text-to-speech reader. ■ In 2017–18 we commenced a project to redevelop our website. One of the aims of this project is to revise content for individuals, to make it easier to find and understand. The OAIC's new website will launch in 2018–19.

Response to Corporate Plan Activity 1.8 — Develop legislative instruments

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.8.1 Applications for Public Interest Determinations and Australian Privacy Principles codes are considered and responded to in a timely manner	Yes	<ul style="list-style-type: none">▪ The OAIC did not receive any APP Code applications during the 2017–18 year. However, on 26 October 2017, the former Australian Information Commissioner developed and made the <i>Privacy (Australian Government Agencies — Governance) APP Code 2017</i> (the Australian Government Agencies Privacy Code, or the Code). This code development process was initiated by a request made from the Australian Information Commissioner to the Department of Prime Minister and Cabinet in May 2017. The Code was to commence on 1 July 2018 and applies to all Australian Government agencies subject to the <i>Privacy Act 1988</i> (except for ministers).▪ On 6 March 2018, the OAIC received an urgent application for a privacy Public Interest Determination (PID) from the Department of Home Affairs, which would vary the terms of Public Interest Determination No. 2, which had been in operation since 1991 and permitted the disclosure of Australian citizenship status information. In response, on 13 March 2018, the former Information Commissioner made the Privacy (Australian Honours System) Temporary Public Interest Determination 2018. The Information Commissioner is currently considering the Department of Home Affairs’ application for a longer-term public interest determination.

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
1.8.2 Legislative instruments are reviewed when necessary	Yes	<ul style="list-style-type: none">▪ The OAIC administers the <i>Privacy (Credit Reporting) Code 2014</i> (CR Code), a legislative instrument, which regulates the handling of consumer credit reporting information in Australia. On 26 July 2017, following a tender process, the OAIC announced that it had contracted PricewaterhouseCoopers (PwC) to conduct an independent review of the operation of the CR Code. The independent review was required by paragraph 24.3 of the CR Code. The review sought feedback, through targeted and public consultation, on issues arising with regard to the interaction between the CR Code and the Privacy Act; significant issues or concerns about the practical operation of the CR Code and any requirements of the CR Code which had not been complied with in practice. PwC’s final report was published on 13 December 2017. The report made recommendations and gave feedback about a number of matters arising from the operation of the CR Code.▪ On 29 May 2018, following an application by the code developer, the Australian Retail Credit Association, the then acting Australian Information Commissioner and acting Privacy Commissioner approved a variation of the CR Code under section 26T of the Privacy Act. The variations addressed recommendations and feedback in the PwC review. The varied CR Code was scheduled to commence on 1 July 2018.

Freedom of information Performance Measures

Response to Corporate Plan Activity 2.1 — Develop the FOI capabilities of Australian Government agencies and ministers, and promote FOI best practice

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
2.1.1 Tools and guidance are updated to assist Australian Government agencies to comply with the Information Publication Scheme (IPS)	Yes	<ul style="list-style-type: none">▪ In 2017–18 the OAIC conducted an IPS survey of all Australian Government agencies. The survey reviewed the operation of the IPS in agencies and also provided agencies with an opportunity to comply with the requirement to conduct a review under section 9 of the FOI Act.
2.1.2 Guidance and resources are reviewed and updated to assist Australian Government agencies and ministers to apply the FOI Act	Yes	<ul style="list-style-type: none">▪ The former Information Commissioner reissued Parts 3, 7, 10 and 11 of the Guidelines under section 93A of the FOI Act, which agencies and ministers must have regard to when performing a function or exercising a power under the FOI Act (FOI Guidelines).▪ In June 2018, the then acting Information Commissioner also undertook public consultation on the revised Agency Resource 14 — Access to government information — administrative access.

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
<p>2.1.3</p> <p>The majority of OAIC’s stakeholders receiving information are satisfied with the content and delivery</p>	Yes	<ul style="list-style-type: none">▪ In 2017–18, the OAIC met with various government agencies to discuss issues affecting the FOI jurisdiction.▪ The OAIC issues a monthly e-newsletter to Government FOI contact officers subscribed to the Information Contact Officer Network (ICON), which provides news, updates and information about FOI. The average click through rate for these monthly newsletters is 33.5%.▪ The OAIC also issues a monthly e-newsletter to subscribers of OAICnet, which provides news and updates in relation to the OAIC, information about upcoming events, and recent privacy determinations and Information Commissioner review decisions.▪ On 27 March 2018, the OAIC held an ICON information session and provided an update about the recent achievements and the priorities of the OAIC in the FOI jurisdiction. Agencies who attended the ICON information session provided positive feedback regarding the delivery and the content.

Response to Corporate Plan Activity 2.2 — Conduct Information Commissioner (IC) reviews

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
2.2.1 80% of IC reviews are completed within 12 months*	Yes	<ul style="list-style-type: none">▪ The OAIC completed 84.1% of IC reviews within 12 months.▪ We used alternative dispute resolution methods and early appraisal to clarify at an early stage the issues to be resolved or the information to be provided by either party in support of their claims or submissions. This included reviewing the material submitted by both parties and providing a preliminary view as to the merits of the case to the relevant party. The party then has the opportunity to make further submissions or take other action as may be appropriate (withdrawal of the IC review application or issuance of a section 55G revised decision).▪ We facilitated the early resolution of Information Commissioner Reviews by assisting the parties to reach an agreement about the outcome of the IC Review pursuant to section 55F of the FOI Act, including by arranging teleconferences between parties where appropriate.▪ We used our regulatory powers under the FOI Act to ensure efficient and timely processes. The Information Commissioner issued a ‘Direction as to certain procedures to be followed in IC reviews’ under section 55(2)(e)(i) of the FOI Act setting out the particular procedures that agencies and ministers must follow in respect of the production of documents, the provision of a statement of reasons where access has been deemed to be refused and the provision of submissions (including when the OAIC will accept submissions in confidence).▪ We updated Part 10 of the FOI Guidelines, to which agencies must have regard in performing a function or exercising a power under the FOI Act, to reflect legislative amendments, developments and discussions in recent IC review decisions and Information Commissioner processes in carrying out IC review functions. Part 10 sets out in detail the process and underlying principles of IC review.

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
		<ul style="list-style-type: none">▪ There are 123 Commissioner-issued IC review decisions made under section 55K of the FOI Act published on AustLII. These decisions help agencies interpret the FOI Act and provide guidance on the exercise of their powers and functions by addressing novel issues as well as building on existing jurisprudence which shapes the FOI jurisdiction.▪ We published an FOI regulatory action policy that outlines our approach to using our IC review powers. The policy should be read together with Part 10 of the FOI Guidelines.▪ We reviewed and updated the SmartForm used by applicants to seek an IC review online.▪ We developed staff capacity to identify matters that can be resolved quickly and informally through early resolution processes, whether it be through agreement or negotiation, case appraisals/preliminary views as well as identifying significant matters which should proceed to a Commissioner decision.

Response to Corporate Plan Activity 2.3 — Investigate FOI complaints and conduct Commissioner initiated investigations

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
2.3.1 80% of FOI complaints finalised within 12 months*	Yes	<ul style="list-style-type: none">83% of FOI complaints finalised during the year were completed within 12 months of receipt.We identified at an early stage whether a complaint is the appropriate mechanism where IC review is available.We used early appraisal to clarify at an early stage the issues to be resolved or the information to be provided by either party in support of their claims or submissions.We published an FOI Regulatory Action Policy, providing detailed information about our approach to the exercise of our FOI functions, including complaint handling. The policy should be read together with the FOI Guidelines.We updated Part 11 of the FOI Guidelines, to which agencies must have regard in performing a function or exercising a power under the FOI Act, to reflect the publication of the FOI Regulatory Action Policy. Part 11 sets out in detail the complaint handling process.
2.3.2 80% of FOI related Commissioner initiated investigations finalised within 8 months*	N/A*	<ul style="list-style-type: none">No FOI related Commissioner initiated investigations began in 2017–18.

*A Measure that is considered Not Applicable for that reporting year, for whatever reason, is recorded towards achieving the Performance Measure.

Response to Corporate Plan Activity 2.4 — Provide an FOI public information service

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
2.4.1 90% of FOI written enquiries are finalised within 10 working days*	No	Target not met: <ul style="list-style-type: none"> 88% of written enquiries were finalised within 10 working days. Enquirers were notified of any delay at the time. The response rate of 88% finalised within 10 working days was maintained from 2016–17. Staff turnover and increase in overall volume of enquiries affected our ability to meet this target in 2017–18.
2.4.2 New community, legal and other networks are identified for targeted promotion of the public information service	Yes	<ul style="list-style-type: none"> Staff from the OAIC's FOI team promoted its public information service at the Sydney Disability Expo in May 2018. The OAIC held an Information Contact Officers Network (ICON) in March 2018. Members of the FOI team participated in FOI practitioner forums hosted by the Australian Government Solicitor throughout the year. The OAIC launched a 'Right to Know' day website in September 2017 which highlighted access to information and included a social media campaign and a video from the Information Commissioner on the theme 'Why Freedom of Information matters to all Australians'. Information access issues, recent decisions and resource updates were highlighted for agency staff and members of the public in regular OAICnet and ICON email newsletters. Staff are working with other Information Commissioner offices to develop an optimal set of principles to inform FOI laws.

Response to Corporate Plan Activity 2.5 — Promote awareness and understanding of information access rights in the community

Performance Measure	Measure achieved	Delivery strategies that were used to achieve the Performance Measure
2.5.1 Increase in media and social media mentions about information access rights	Yes	<ul style="list-style-type: none">▪ In 2017–18, there were 345 online media mentions and 428 social media mentions of information access rights and the OAIC. <p>The work that we did to achieve these mentions included:</p> <ul style="list-style-type: none">▪ Conducting a campaign for ‘Right to Know Day 2017’, which included launching a Right to Know website, with a video welcome from the then Information Commissioner on ‘Why Freedom of Information matters to all Australians’, as well as social media tips and posters.▪ Using Twitter to highlight Information Awareness Month (May 2018).▪ Participating in the Association of Information Access Commissioners (AIAC), which is an important way for the Australian Information Commissioner and staff to engage with other Information Commissioners. These meetings are held every six months and allow Information Commissioners to exchange ideas and experiences gained from the range of information access jurisdictions across Australia.
2.5.2 The OAIC’s website is accessible for individuals and contains targeted content about information access rights	Yes	<ul style="list-style-type: none">▪ The OAIC’s website contains a number of web accessibility improvements and we continually look for further ways that these can be enhanced.▪ For example, in 2017–18 we introduced a ‘mega-menu’, which assists users to find content more easily. We also introduced ReadSpeaker, which is a naturalistic text-to-speech reader.▪ In 2017–18 we commenced a project to redevelop our website. One of the aims of this project is to revise content for individuals, to make it easier to find and understand. The OAIC’s new website will launch in 2018–19. Throughout 2017–18 the OAIC has revised and updated its information access resources, including Fact Sheets and FAQs, to make them more accessible to all members of the community, including for culturally and linguistically diverse groups.

Privacy

The *Privacy Act 1988* (Privacy Act) requires Australian Government agencies and private sector organisations to follow a set of rules when collecting, using and storing individuals' personal information. Personal information is any information that is about an individual. The most obvious example is a name — other examples include address,

date of birth, photo of their face or even a record of their opinion and views. Any information that is about an identifiable individual is personal information.

Additional information regarding privacy statistics is included at Appendix C on page 148.

Australian Privacy Principles

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

APP 1 — Open and transparent management of personal information

APP 2 — Anonymity and pseudonymity

APP 3 — Collection of solicited personal information

APP 4 — Dealing with unsolicited personal information

APP 5 — Notification of the collection of personal information

APP 6 — Use or disclosure of personal information

APP 7 — Direct marketing

APP 8 — Cross-border disclosure of personal information

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

APP 10 — Quality of personal information

APP 11 — Security of personal information

APP 12 — Access to personal information

APP 13 — Correction of personal information

Privacy enquiries

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

The OAIC experienced a 16% increase in privacy enquiries on the previous year. We answered 14,928 telephone calls related to privacy, and responded to 4,452 written privacy enquiries. We also assisted 27 in-person privacy enquiries.

The OAIC continues to see a broad range of enquiries from the community. Over half of all privacy phone enquiries received concerned the operation of the Australian Privacy Principles. The growth in enquiries indicates a continuation of the year-on-year trend of increased awareness about privacy issues, and a desire by individuals to exercise their rights.

The introduction of the Notifiable Data Breaches scheme has also contributed to an increase in enquiries received by the OAIC, and reflects the work the OAIC does in supporting entities to comply with their obligations.

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

Case study 1 — An individual's personal information is involved in a data breach

An enquirer received an email notifying them of a data breach from an organisation where they had applied for work, and contacted the OAIC for information about what they should do in response to the email.

We explained that under the Notifiable Data Breaches scheme, where an organisation has experienced a data breach involving personal information, the organisation needs to assess the potential impact and notify individuals of the data breach if there is a likely risk of serious harm to individuals. We referred the enquirer to guidance on our website on steps they could take to prevent identity fraud in the event of a data breach, as well as referring the individual to a security support service.

The enquiries officer also explained that organisations are required to take reasonable steps under Australian Privacy Principle 11 to ensure the security of personal information, and the steps the individual could take to lodge a privacy complaint.

Case study 2 — A health service provider seeks information on clients' right to access information

A psychologist contacted the OAIC about a request from a client for access to their personal information. The client had attended couple's counselling with their partner, and then individual sessions.

One of the individuals requested the psychologist provide access to all of the records for both their individual sessions, as well as the couple's sessions. The psychologist asked about the individual's right of access to these records.

We provided information on the application of APP 12 — Access to personal information, including APP 12.3(b), where providing access may have an unreasonable impact on the privacy of other individuals. We gave the enquirer information about a best privacy practice approach and referred them to the OAIC's APP Guidelines for more detailed guidance.

Issues regarding privacy enquiries

In 2017–18 the most common privacy enquiries to our office were about the use and disclosure of someone’s personal information (APP 6) followed by access (APP 12) and collection of personal information (APP 3).

Table 1 — Phone enquiries about the APPs

Issues	Number
APP 1 — Open and transparent management	48
APP 2 — Anonymity and pseudonymity	13
APP 3 — Collection	991
APP 4 — Unsolicited personal information	9
APP 5 — Notification of collection	637
APP 6 — Use or disclosure	1560
APP 7 — Direct marketing	159
APP 8 — Cross-border disclosure	60
APP 9 — Government identifiers	5
APP 10 — Quality of personal information	53
APP 11 — Security of personal information	882
APP 12 — Access to personal information	1351
APP 13 — Correction	145
APPs — Exemptions	975
APPs — Generally	980

We also received a number of questions related to other privacy issues, reflecting the broad range of matters the OAIC regulates.

The table below categorises these enquiries.

Table 2 — Other phone enquiries regarding privacy

Issues	Number of calls
Credit reporting	904
Data breach notification (voluntary)	229
Data-matching	1
Healthcare Identifier	1
My Health Records	9
Notifiable Data Breaches (NDB) scheme	513
National Privacy Principles	4
Privacy codes	30
Spent convictions	102
Tax file numbers	31
Territory Privacy Principles	23

Privacy complaints

In 2017–18 the OAIC continued to provide an effective and efficient complaints service, investigating and resolving complaints by individuals about the possible mishandling of personal information under the Privacy Act and other relevant laws.

The OAIC handles complaints made about interferences with privacy under the APPs, any registered APP code, as well as matters relating to consumer credit reporting. We also resolve complaints about the handling of other information such as tax file numbers, spent convictions, data-matching and healthcare identification information.

In 2017–18 we received 2,947 privacy complaints. This is an 18% increase on the number of complaints we received last year, and follows on from a 17% increase in complaints in 2016–17, indicating a continuing awareness by individuals about

their privacy rights, and a willingness by individuals to take steps to protect their personal information.

The implementation of the Notifiable Data Breaches scheme on 22 February 2018, and the General Data Protection Regulation on 25 May 2018, have also shined a spotlight on personal privacy, leading to an increased engagement by individuals.

Alongside this increase in complaints, the OAIC finalised 2,766 complaints during the period. This is an 11% increase on the number of complaints we closed last year, and follows on from a 22% increase in finalisations in 2016–17.

As part of an MOU with the ACT Government, we continue to provide privacy services to ACT public sector agencies including handling privacy complaints in relation to the *Information Privacy Act 2014* and its 13 Territory Privacy Principles.

Figure 1 — Complaints received per month — the past three years

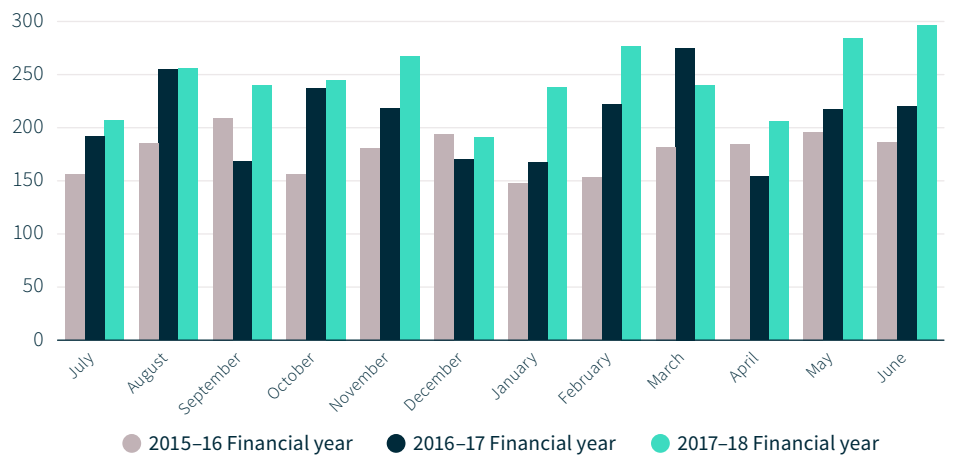
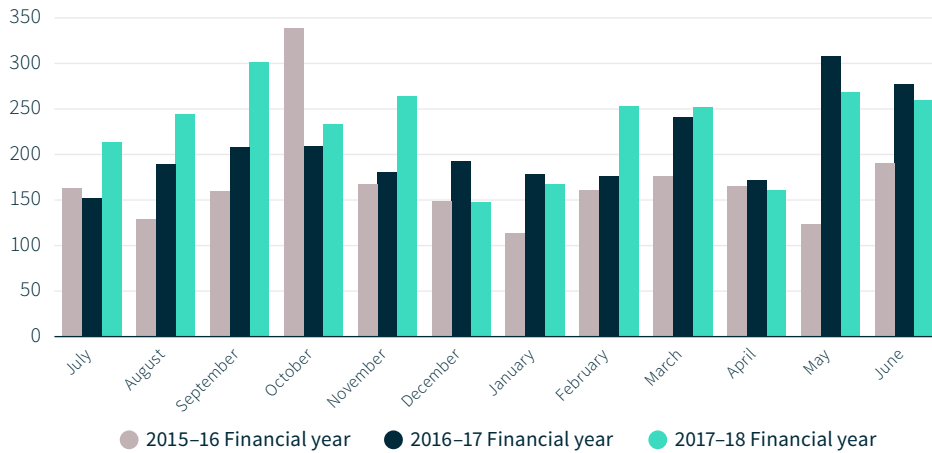


Figure 2 — Complaints closed per month — the past three years

Issues regarding privacy complaints

The majority of complaints we receive (70%) are about the handling of personal information under the APPs.

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

1. APP 6 — Use or disclosure of personal information
2. APP 11 — Security of personal information
3. APP 12 — Access to personal information
4. APP 3 — Collection of personal information
5. APP 10 — Quality of personal information

In 2017-18, 14% of the complaints we received were about credit reporting (slightly down from 16% the previous year). This reflects the continuing role of external dispute resolution schemes in resolving complaints about credit reporting matters.

More information is available in Appendix C.

Sectors

Privacy complaints can cover a broad range of sectors. The top six sectors remain unchanged from the 2016–17 results. The top 10 complaints by sector are:

Table 3 — Top 10 sectors by complaints received

Sector	Number
Finance (including superannuation)	398
Health service providers	321
Australian Government	305
Telecommunications	244
Credit reporting bodies	173
Retail	147
Online services	142
Utilities	120
Debt collectors	116
Insurance	104

Case study 3 — Failure to protect personal information by an Australian Government agency

The complainant was notified by the respondent, an Australian Government agency, that a computer containing their personal information had been stolen from an office where it had not been stored securely.

The OAIC investigated the alleged failure to protect the complainant’s personal information from misuse and loss. The matter was resolved by conciliation. The respondent provided the complainant with \$1,600 in compensation.

Case study 4 — Disclosure of medical information to a third party

The complainants, a couple, became aware that the respondent, a Medical Centre had disclosed their entire medical files to their insurer, including personal information that was not relevant to their insurance claim.

The matter was investigated and successfully conciliated by the OAIC. The respondent provided the complainants with a letter of apology, placed its privacy policy in its rooms and on its website, changed its procedures to ensure that a similar incident would not happen in the future, and provided \$5,000 to each of the complainants.

Resolving complaints

In 2017–18, we substantially improved the average time taken to close a complaint from 4.7 months to 3.7 months. During this period, 97% of all privacy complaints were resolved within 12 months of receipt, an improvement on last year.

During 2017–18 we trialled an early resolution process, with a focus on bringing the parties together at an early stage to see if matters could be resolved by agreement. This approach has assisted parties to attain outcomes in a more timely manner, which is reflected in the improvement in the average time taken to close a complaint.

Matters that are unable to be resolved via the early resolution process proceed for further inquiries or investigation, and some are formally conciliated. Where complaints resolve through conciliation, many positive and innovative outcomes are achieved, and parties demonstrate a high level of satisfaction with the outcome.

To support the work of the teams in resolving complaints, we provide staff with conciliation training, and have a number of staff accredited under the National Mediator Accreditation Standards (NMAS).

Most privacy complaints are closed on the basis that the respondent has not interfered with the individual's privacy, or on the basis that the respondent has adequately dealt with the complaint.

In 2017–18, the main remedies achieved in complaints were:

1. Record amended
2. Compensation
3. Access provided
4. Other or confidential
5. Apology

More information is available in Appendix C.

Case study 5 — Security and disclosure of personal information by a bank

The complainant was a customer of the respondent, a bank. There was fraudulent activity on the complainant's account. While the respondent was investigating the fraud, it misdirected an email meant for the complainant to a third party.

The complainant claimed the respondent interfered with their privacy by inappropriately disclosing personal information in the email, and failing to take reasonable steps in the circumstances to protect the personal information from unauthorised access and disclosure.

The OAIC conciliated the complaint, and the parties agreed to settle the matter on the basis that the respondent pay \$7,000, and follow up with the police about the progress of the fraud investigation. The amount of compensation reflected that the incident had also impacted another member of the complainant's family.

Case study 6 — Disclosure of personal information by an insurance assessor

There was a fire at a house in which the complainant lived. The insurer sent a loss assessor (the respondent) to inspect the property. The respondent provided a report of the incident to the complainant's insurer, who passed it on to the complainant.

The complainant claimed that the respondent interfered with their privacy by amending the report and then disclosing it to the complainant's real estate agent. The complainant alleged that the amended report was used by the real estate agent in a way that caused the complainant distress.

The OAIC conciliated the complaint, and the parties agreed to settle the matter on the basis that the respondent pay \$2,000 in compensation. The respondent had previously apologised to the complainant.

Early resolution

The OAIC's early resolution pilot was established in 2017. It brings the parties together at an early stage, to see if matters can be resolved by agreement between the parties. The process has reduced our initial response times and contributed to an increase in the number of complaints closed. In 2017–18, 53% of all complaints finalised were closed through our early resolution process.

Case study 7 — Failure by telecommunications provider to protect personal information from unauthorised access

The complainant had a mobile phone account with the respondent, a telecommunications provider. The complainant's phone stopped working, and when they contacted the respondent they discovered the phone number had been ported (transferred to a different mobile provider) without their knowledge.

The matter was resolved through the OAIC's Early Resolution Process, in which the respondent contacted the complainant directly to discuss the matter, reversed the port, offered three months free service and apologised.

Community and sector engagement

An important part of our role is interacting with key industry and community stakeholders, including government bodies and external dispute resolution schemes, about recurring or significant issues arising in complaints.

External Dispute Resolution schemes

The Information Commissioner can recognise external dispute resolution (EDR) schemes to handle particular privacy-related complaints (section 35A of the Privacy Act). The EDR schemes currently recognised are:

- Credit and Investments Ombudsman (CIO)
- Energy & Water Ombudsman NSW (EWON)
- Energy & Water Ombudsman Queensland (EWOQ)
- Energy & Water Ombudsman SA (EWOSA)
- Energy and Water Ombudsman Victoria (EWOV)
- Energy and Water Ombudsman Western Australia (EWOWA)
- Financial Ombudsman Service (FOS)

- Public Transport Ombudsman Victoria (PTO)
- Telecommunications Industry Ombudsman (TIO)
- Tolling Customer Ombudsman (TCO)

Community outreach

In 2017–18, we attended community outreach events to promote awareness of the privacy complaint functions of our office, and the ways in which individuals can access or protect their personal information and consumer credit reporting information. These events included the Sydney Disability Expo and a Privacy Awareness Week stall with the Australian Retail Credit Association.

During the year, we also continued to increase media and social media coverage about our complaint handling function with targeted messaging around the complaints process and privacy issues that may be of public interest.

Determinations

Under section 52 of the Privacy Act, the Commissioner may make determinations in relation to privacy complaints. The Commissioner may also make determinations in relation to privacy Commissioner initiated investigations (CIIs).

In 2017–18, three privacy determinations were made by the Commissioner. Two of these determinations included findings that the respondents had not interfered with the individual's privacy and therefore the complaints were dismissed under section 51(1)(a) of the Privacy Act.

Determination: 'PB' and United Super Pty Ltd as Trustee for Cbus (Privacy) [2018] AICmr 51 (23 March 2018)

The Commissioner found that United Super Pty Ltd as Trustee for Cbus (Cbus) interfered with the privacy of class members by disclosing their personal information to an external organisation for a secondary purpose without their consent.

Under section 52(1)(b)(iii) of the Privacy Act the Commissioner may make a declaration that the complainant is entitled to a specified amount by way of compensation. In this instance, however, the Commissioner considered the most appropriate form of redress to the class members was a public apology.

The Commissioner also made a declaration that Cbus should provide written confirmation to the OAIC that certain corrective measures proposed after the breach were adopted and implemented by Cbus, and then to undertake a review of those measures and confirm in writing the findings and outcomes of that review.

Determination: 'PA' and Department of Veterans' Affairs (Privacy) [2018] AICmr 50 (23 March 2018)

The complainant alleged that the disclosure of their personal information by the Department of Veteran's Affairs (the Department) for inclusion in a database to assist in health research projects was a breach of APP 6 — Use or disclosure of personal information.

Section 95 of the Privacy Act allows an agency to commit an act that would breach an APP provided it is done in the course of medical research and in accordance with medical research guidelines approved by the Commissioner.

The Commissioner found that the medical research exemption applied in this case, as the disclosure of personal information occurred in the course of medical research, and in accordance with guidelines issued by the National Health and Medical Research Council. Therefore the Department did not interfere with the complainant's privacy.

Determination: 'OJ' and Department of Home Affairs (Privacy) [2018] AICmr 35 (19 March 2018)

The complainant alleged that the Department of Home Affairs (the Department) had interfered with his privacy by disclosing his personal information to the Department of Human Services Victoria (DHSV) in, or around, 2013 (the DHSV complaint), and to the television show, *A Current Affair* (ACA) in July 2014 (the ACA complaint).

The Department advised that it disclosed the complainant's personal information to DHSV in compliance with a subpoena. The

Commissioner found that the disclosure was required by law and comes within the exception to IPP 11, set out in 11.1(d).

As the ACA complaint was against the Department, not the Minister of Home Affairs (the Minister), the Commissioner could only consider the Department's use of personal information and its disclosure to the Minister's office. He was unable to consider the disclosure to ACA by the Minister.

The Commissioner found the use and disclosure of personal information was made for the purpose of discharging the Secretary of the Department's obligation under the *Public Service Act 1999* to provide the Minister with advice. As the conduct was required by law, it fell within the exception to APP 6, set out in APP 6.2(b).

Data breach notifications

Notifiable Data Breaches scheme

The NDB scheme commenced on 22 February 2018, following changes to the Privacy Act in 2017. Under the NDB scheme, Australian Government agencies and organisations with existing personal security obligations under the Privacy Act are required to notify individuals who are likely to be at risk of serious harm as a result of a data breach. The OAIC must also be notified.

Our responsibilities under the NDB scheme include:

- Receiving notifications of eligible data breaches.
- Encouraging compliance with the scheme, including handling complaints and taking regulatory action in response to instances of non-compliance.
- Offering advice and guidance to regulated organisations, and providing information to the community about the operation of the scheme.

In February 2018, we published a new resource on data breaches — 'Data breach preparation and response — A guide to managing data breaches in accordance with the *Privacy Act 1988* (Cth)'. This resource combines best practice advice for preparing for and responding to data breaches, as well as specific information for agencies and organisations about how to comply with the NDB scheme.

We have also published resources for individuals that have received a notification under the NDB scheme. These are available on our website, and are intended to assist individuals to take steps to reduce the risk of experiencing harm as a result of a data breach.

The OAIC reviews each notice received under the NDB scheme to consider whether the data breach has been contained, that the agency or organisation has taken reasonable steps to mitigate the impact of the breach on the individuals at risk of serious harm, and that the entity is taking reasonable steps to minimise the likelihood of a similar breach occurring again.

Since the introduction of the NDB scheme in February 2018, there has been an increasing number of notifications made to the OAIC. This demonstrates that agencies and organisations are aware of their obligations.

More detailed information about data breaches reported under the NDB scheme is contained in our NDB Quarterly Statistics Reports, available on our website.¹

Voluntary data breaches

Prior to the introduction of the NDB scheme, the OAIC administered a voluntary data breach notification scheme. This allowed businesses and agencies to self-report possible privacy breaches to the OAIC. The OAIC continues to register voluntary data breach notifications for incidents that do not fall within the scope of the NDB scheme. These include data breaches that occurred prior to 22 February 2018, or incidents that do not involve businesses or agencies that are regulated by the scheme.

Table 4 — NDB, voluntary and mandatory My Health Records notifications

Year	2015–16	2016–17	2017–18
Notifiable data breaches (NDB)	-	-	305
Voluntary notifications	107	114	174
Mandatory notifications (<i>My Health Records Act 2012</i>)	16	35	28
Total	123	149	507

In 2017–2018, the number of voluntarily reported data breaches continued to grow, with voluntary notifications up 53% on the previous year. This is significantly more than the 29% increase reported in the 2016–17 financial year. Alongside this, the OAIC met its overall target for finalising data breach notifications, with 99% of notifications under the NDB scheme finalised within 60 days, and 97% of voluntary data breach notifications finalised within 60 days.

The increase in voluntary notifications can be explained, at least in part, by the OAIC’s activities in raising awareness of the introduction of the NDB scheme in 2018, as well as global regulatory developments which focused on the importance of entities understanding and responding to data breaches.

We also administer a mandatory scheme for digital health data breaches. For further information, refer to the *Annual Report of the Australian Information Commissioner’s activities in relation to digital health 2017–18* (available on the OAIC website no later than 28 November 2018).

1 Where notifiable data breaches affect multiple entities, the OAIC may receive multiple notifications relating to the same data breach. Notifications under the NDB scheme to the OAIC relating to the same data breach incident are counted as a single notification in the NDB Quarterly Statistics Reports. In 2017–18 there were 49 secondary notices.

Privacy Commissioner initiated investigations

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

Privacy Commissioner initiated investigations (CIIs) are often conducted in response to incidents of significant community concern or discussion, or in response to notifications from third parties about potentially serious privacy problems. They may also be conducted in response to notifications about data breaches. Our key objective in undertaking a CII is improving the privacy practices of investigated entities.

The Commissioner may also decide to discontinue an investigation. This may be in matters where the Commissioner is satisfied that there has not been an interference with privacy, or the matter has been adequately dealt with by the respondent or that no further regulatory action is warranted under the circumstances.

The Privacy Act provides the Commissioner with the power to accept an ‘enforceable undertaking’ offered by a respondent. Three enforceable undertakings were offered by respondents in 2017–18 following a CII.

In 2017–18, we conducted preliminary inquiries or commenced an investigation in relation to 21 matters. In some matters, more than one respondent was identified which is reflected in the number of CIIs. In April 2018, the OAIC commenced an investigation into the acts and practices of Facebook, in relation to allegations that the personal information of Facebook users had been improperly collected by third party applications. As of the end of the 2017–18 financial year, this investigation is ongoing.

Table 5 — Privacy CIIs

Year	Number of CIIs
2015–16	17
2016–17	29
2017–18	21

While the average time taken to close CIIs in 2017–18 was 163 days, or approximately 23 weeks, the OAIC did not meet its target to finalise 80% of CIIs within eight months. Despite this, the OAIC closed 72% of CIIs within eight months and the OAIC remains committed to working with respondents to resolve issues of non-compliance and improve privacy practices.

Case study 8 — Accidental disclosure of health information by a third-party provider

In October 2016, the Australian Red Cross Blood Service (the Blood Service) was notified that a data file, which contained the personal information of approximately 550,000 prospective blood donors entered into the Blood Service's website, had been saved to a public-facing web server. The Blood Service immediately took steps to contain the breach, including temporarily closing the website and notifying individuals whose personal information had been involved.

The subsequent investigation found that the file had been inadvertently placed by an employee of a third-party provider, Precedent Communications Pty Ltd (Precedent), on a publicly accessible portion of a web server managed by Precedent. The investigation also found that the Blood Service did not have appropriate measures in place to protect information concurrently held by third-party providers, and did not take reasonable steps to destroy or de-identify information collected through the Blood Service website once it was no longer needed.

Following the incident, the Blood Service took numerous steps to enhance its information handling practices and offered an enforceable undertaking to commit to reviewing its compliance with, and the effectiveness of, its third party management policy and operating procedure within a six month period.

In response to this incident, Precedent invested in improving its information handling practices, and offered an enforceable undertaking to commit to strengthening its information security measures; improving its privacy management policies, statement and procedures; and improving staff privacy training.

Case study 9 — Publication of a de-identified dataset

On 1 August 2016, the Department of Health (the Department) published a collection of Medicare Benefits Schedule (MBS) and Pharmaceutical Benefits Schedule (PBS) data. The dataset contained claims information for a 10% sample of people who had made a claim for payment of Medicare Benefits since 1984, or for payment of Pharmaceutical Benefits since 2003. Prior to publication, the Department of Health had taken a range of steps to de-identify the data set. However, in September 2016 researchers from the University of Melbourne identified a weakness in the technique used to encrypt Medicare service provider numbers in the dataset, allowing the encryption to be reversed. The Department immediately removed the dataset from public access; the Commissioner opened an investigation into the incident to determine if a breach of the Privacy Act had occurred.

The investigation found that the Department of Health improperly disclosed the information of service providers, but did not improperly disclose the personal information of patients. The investigation also found that the steps taken by the Department of Health to confirm personal information was removed from the dataset prior to its publication were inadequate relative to the sensitivity of the information and the context of its release.

The investigation was concluded by an enforceable undertaking offered by the Department of Health and accepted by the Commissioner, which provides for the OAIC's oversight of the Department of Health's ongoing review and enhancement of its data governance arrangements.

The incident provided key lessons for custodians of datasets when considering de-identification. In particular, deciding whether information has been de-identified to an extent suitable for public release requires careful and expert evaluation and consideration of the context of release, and appropriate processes and expertise should sit behind any decision to release de-identified personal information.

Privacy assessments

In 2017–18 we assessed a range of sectors including loyalty programs, identity verification, telecommunications and government. We also conducted privacy assessments in the digital health sector. For more information on our digital health assessments, see page 69.

We use a range of methodology to conduct our assessments, including comprehensive and in-depth review of policy documents, interviews with staff and/or site inspections. Consistent with last year, 100% of the OAIC's recommendations were accepted or planned for action by businesses or government agencies being assessed.

Loyalty programs

We commenced two new assessments of loyalty programs in Australia in the 2016–17 financial year. These assessments examined how personal information is managed in accordance with APP 1 — Open and transparent management of personal information. The assessments also looked at whether sufficient notification to individuals is provided regarding the collection of their personal information in accordance with APP 5 — Notification of the collection of personal information. The assessments will be finalised, and made public, during the 2018–19 financial year.

Identity verification

In the 2016–17 financial year we commenced two assessments of Gateway Service Providers (GSPs) to the Document Verification Service (DVS) — VixVerify and Trulioo. The assessments examine how personal information collected through the DVS arrangement is handled by GSPs in accordance with APP 3 — Collection of solicited personal information and APP 5 — Notification of the collection of personal information. We finalised these assessments in the 2017–18 financial year, making one recommendation in each assessment. The assessment reports are published on our website. In 2017–18 we worked with the Department of Home Affairs to identify business users that will participate in our next assessment relating to the DVS, which will commence in 2018–19.

Telecommunications

Case study 10 — Handling of personal information disclosed under the *Telecommunications (Interception and Access) Act 1979*

In 2017–18 we finalised an assessment of whether iiNet was taking reasonable steps to protect personal information when responding to requests for access by law enforcement agencies, as required under the *Telecommunications (Interception and Access) Act 1979* (TIA Act) and in accordance with APP 11 — Security of personal information. We had previously finalised similar assessments of Telstra, Vodafone and Optus. A combined summary report outlining the findings from each assessment is available on our website.

Case study 11 — Handling of personal information retained as part of the ‘data retention scheme’ under the *Telecommunications (Interception and Access) Act 1979*

In 2017–18 we began a series of assessments that consider whether certain telecommunications service providers are meeting their information security obligations under APP 11 — Security of personal information, with respect to the personal information they are required to retain under the ‘data retention scheme’ that came into full effect on 13 April 2017. We conducted the fieldwork for two assessments in 2017–18. These assessments will be finalised in 2018–19. Fieldwork for other assessments in this assessment series will commence in 2018–19.

Government

Passenger Name Record

Under our memorandum of understanding with the Department of Home Affairs we commenced a Passenger Name Record (PNR) data related assessment in the 2016–17 financial year which followed up the implementation of recommendations made in a previous assessment undertaken in 2015. The 2016–17 assessment also included consideration of Home Affairs' practices concerning the destruction and de-identification of PNR data. The assessment will be finalised during the 2018–19 financial year.

In 2017–18 we also commenced a new PNR data related assessment. This assessment looked at Home Affairs' connected information environment (CIE) project, and specifically how Home Affairs is implementing APP 11 — Security of personal information — to protect PNR data in the CIE. The assessment also considered whether Home Affairs is using and disclosing personal information in accordance with its obligations under APP 6. We have completed the fieldwork for this year's assessment and it will be finalised during the 2018–19 financial year.

Contractual arrangements in relation to regional processing centres

In 2016–17 we commenced an assessment on the Home Affairs' privacy arrangements for Regional Processing Centres, including:

- General governance and privacy frameworks under APP 1 — Open and transparent management of personal information.

- How Home Affairs met its security obligations under APP 11 — Security of personal information, including through the use of contractual measures as required under section 95B of the Privacy Act.

We finalised this assessment during the 2017–18 financial year. We made four recommendations, which were agreed by Home Affairs. The assessment report is published on our website.

Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014

In 2017–18 we finalised four assessments that considered how personal information was being handled by Home Affairs under the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Foreign Fighters Act). These assessments considered how personal information is handled through border clearance processes at Australian international airports, including biometric information collected by SmartGates (Schedule 5) and the Advanced Passenger Processing (AdPP) data exchanged between airlines and Home Affairs (Schedule 6). Three of these assessments commenced in the 2016–17 financial year:

- An assessment of the security arrangements that are in place to protect personal information after its collection by SmartGates. We made two recommendations in this assessment.
- An assessment of the steps that a third party provider to Home Affairs is taking to secure personal information collected through AdPP (Schedule 6). We made two recommendations in this assessment.
- An assessment of the procedures Home Affairs has in place to respond to an individual's request for access to their

personal information that was collected by SmartGates, in accordance with APP 12 — Access to personal information. We made one recommendation in this assessment.

- The fourth assessment in 2017–18 considered the steps that a third party to Home Affairs is taking to secure access to personal information that is held in the systems that support SmartGates. We did not make any recommendations in this assessment.

In 2017–18 we also followed up on Home Affairs' implementation of the three initial assessments relating to Schedules 5, 6 and 7 of the Foreign Fighters Act that were completed across the 2015–16 and 2016–17 financial years. At the close of the 2017–18 financial year:

- We were satisfied that Home Affairs had implemented the recommendations in the Schedule 7 assessment.
- We were satisfied that Home Affairs had either implemented or was taking steps to implement the recommendations in the Schedule 6 assessment.
- We had not received a response from Home Affairs to our follow-up of the Schedule 5 assessment.

Tax file numbers

Under the Privacy (Tax File Number) Rule 2015 which regulates the collection, storage, use, disclosure, security and disposal of individuals' Tax File Number (TFN) information, six specified Australian Government agencies (Commissioner of Taxation/Australian Taxation Office, Australian Prudential Regulation Authority, Department of Human Services, Department of Education and Training, Department of

Veterans' Affairs and the Department of Social Services) have obligations to make a range of information publicly available in relation to how TFN information is to be handled.

In 2016–17 we commenced an assessment that looked at how the agencies meet their obligations. The assessment was conducted through a desktop review of each agency's website and a targeted survey questionnaire sent to each agency. This assessment was finalised in 2017–18, and we will release a combined summary report during the 2018–19 financial year.

Universal Student Identifier

Under our MOU with the Department of Education and Training, acting through the Student Identifiers Registrar (the Registrar), we conducted a self-assessment of five registered training organisations' (RTOs') handling of student identifiers and associated personal information in accordance with the *Student Identifiers Act 2014* and the Privacy Act. The self-assessment looked at how these RTOs were managing personal information in accordance with APP 1 — Open and transparent management of personal information, and APP 5 — Notification of the collection of personal information. The OAIC will be releasing a combined report in the 2018–19 financial year, along with a number of recommendations resulting from the survey.

ACT Government

Under our MOU with the ACT Government, we conducted two assessments of ACT Government agencies. These activities are reported on in more detail in the *Memorandum of Understanding with the Australian Capital Territory for the provision of privacy services 2017–18 Annual Report* (available on the OAIC website no later than 1 November 2018).

Appendix B on page 145 contains more information about our MOU with the ACT Government.

Data-matching

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

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

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

Statutory data-matching

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

Enhanced Welfare Payment Integrity

The 'Enhanced Welfare Payment Integrity — non-employment income data-matching measure' was announced in the 2015–16 Mid-Year Economic and Fiscal Outlook (MYEFO). It increases DHS' capability to conduct data-matching to identify non-compliance by welfare recipients.

This year, we conducted two privacy assessments of DHS's data-matching activities. The first of these assessments looked at DHS's non-employment income data matching (NEIDM) program, and

specifically how DHS addresses the requirements of APPs 1.2, 3 and 5 in relation to that program.

The other assessment considered APPs 10 and 13 by looking at how DHS ensures the quality of the personal information used in its Pay-As-You-Go (PAYG) data-matching program, and whether the PAYG program facilitates customer correction of personal information being used in the program. The draft reports for these assessments were provided to DHS for comment in May 2018, and we will work with DHS to finalise and publish the assessments in the 2018–19 financial year.

A third assessment, looking at how DHS addresses its obligations under APP 11 — Security of personal information, to secure the personal information used in both the NEIDM and PAYG programs, will take place early in the 2018–19 financial year.

Data-matching under the voluntary guidelines

We administer the Guidelines on Data-matching in Australian Government Administration (Guidelines), which are voluntary guidelines to assist government agencies with adopting appropriate privacy practices when undertaking data-matching activities that are not covered by the Data-matching Act. This year we reviewed seven data-matching program protocols submitted by matching agencies including the Australian Tax Office and the Department of Human Services.

The Commissioner approved two requests for exemption from certain requirements of the Guidelines. A list of the exemptions that we approved can be found on our website.

Digital health assessments

Health information is considered particularly sensitive. This sensitivity has been recognised in the *My Health Records Act 2012* (My Health Records Act) and *Healthcare Identifiers Act 2010* (HI Act), which regulate the collection, use and disclosure of information, and give the Information Commissioner a range of enforcement powers. This sensitivity is also recognised in the Privacy Act which treats health information as ‘sensitive information’.

We initiated one assessment relating to the My Health Record system in 2017–18; finalised one assessment which commenced in the previous reporting period; and continue to progress one assessment that began in the previous year. For further information, refer to the *Annual Report of the Australian Information Commissioner’s activities in relation to digital health 2017–18* (available on the OAIC website no later than 28 November 2018).

Advice for businesses and agencies

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

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

- Adoption, use and disclosure of government related identifiers.
- Australian Government Agencies Privacy Code.
- Australian Government’s proposed Consumer Data Right Scheme.

- Credit reporting.
- Data breach notification requirements, including the Notifiable Data Breaches scheme.
- De-identification and re-identification.
- Digital identity systems.
- Direct marketing.
- External Dispute Resolution schemes.
- Government data-matching.
- Higher education proposals affecting handling of information about students.
- Law enforcement and national security.
- The My Health Records (MHR) system.
- New and emerging technologies.
- Online communications and privacy.
- Privacy implications of data analytics and related activities.
- Privacy and international agreements.
- Privacy and security, as part of the Attorney-General's Department's reforms to the Protective Security Policy Framework (PSPF).
- Telecommunications.

We also drafted submissions on issues such as:

- Privacy in the digital age.
- Mandating consumer credit reporting.
- National security laws.
- Digital identity.
- Digital economy.
- Financial hardship.
- Establishment of the Australian Financial Complaints Authority.
- New information-sharing arrangements under proposed legislation.
- National identity-matching services for biometric information.
- Non-consensual sharing of intimate images.
- Open Banking.
- Access to Medicare information.
- The redevelopment and audit of the Higher Education Data Collection.
- The secondary use framework for information contained in the My Health Record system.

Case study 12 — Open Banking

In August 2017 the Treasury released an Issues Paper on the Review into Open Banking in Australia. This paper invited submissions on the most appropriate model for the Australian context and how best to implement such a model, including what data should be shared, with whom, and how to ensure data is kept secure and privacy is respected.

The OAIC provided a submission to the review, acknowledging the potential of Open Banking to give individuals greater choice and control over how their data is used, while highlighting some important implications that the new scheme may have for the handling of individuals' financial information, which many individuals consider especially sensitive. Many OAIC recommendations were reflected in the Final Open Banking Report, and the OAIC has continued to work with the Treasury on the development and implementation of the scheme, which is set to commence in July 2019.

Submissions can be read in full on the OAIC website.

Resources

We published a number of new resources, guides and fact sheets in 2017–18.

In preparation for the commencement of the Notifiable Data Breaches scheme, we published guidance and a webinar, to assist Australian Government agencies and businesses to understand the new requirements. We also published guidance for consumers about what to expect when receiving a data breach notification and what actions they can take if they have been affected by a data breach.

In preparation for the implementation of the European Union's General Data Protection Regulation (GDPR) we published guidance to assist Australian Government agencies to understand whether the new requirements would apply to them.

We updated our 'Guide to securing personal information' to incorporate information about the Notifiable Data Breaches scheme, and to update references to information security resources.

To assist agencies and organisations to make the most of their valuable data resources, the OAIC released its final version of the Guide to Data Analytics, originally published as a consultation draft in 2016. We also collaborated with the CSIRO's Data61 to release a joint resource which provides detailed guidance on de-identification, the De-Identification Decision-Making Framework. We also released the OAIC's 'De-identification and the Privacy Act' resource to reflect this updated approach.

In preparation for the commencement of the Australian Government Agencies Privacy Code on 1 July 2018, we published a suite of resources to assist agencies to comply with their new obligations, including an Interactive

Privacy Management Plan and a Privacy Officer toolkit. We also conducted a webinar for agencies to assist in the completion of their Privacy Management Plans and developed and delivered a Privacy Officer training course to assist Privacy Officers to undertake their role under the Code.

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

Privacy legislative instruments

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

Privacy (Australian Government Agencies — Governance) APP Code 2017

On 26 October 2017, the Information Commissioner made the *Privacy (Australian Government Agencies — Governance) APP Code 2017* (the Code).

The Code commences on 1 July 2018 and applies to all Australian Government agencies subject to the Privacy Act (except for ministers). The Code sets out specific requirements and key practical steps that agencies must take as part of complying with Australian Privacy Principle 1.2. It requires agencies to move towards a best practice approach to privacy governance

to help build a consistent, high standard of personal information management across all Australian Government agencies.

The requirements of the Code include having a privacy management plan, appointing a Privacy Champion and Privacy Officer, undertaking Privacy Impact Assessments (PIAs) for all high privacy risk projects or initiatives that involve new or changed ways of handling personal information, and taking steps to enhance internal privacy capability.

Privacy (Australian Honours System) Temporary Public Interest Determination 2018

On 13 March 2018, the Information Commissioner made Privacy (Australian Honours System) Temporary Public Interest Determination 2018. This followed an application for a public interest determination on 6 March 2018 from the Department of Home Affairs (Home Affairs).

This temporary public interest determination (TPID) allows Home Affairs to disclose Australian citizenship and permanent residency status information without breaching APP 6 — Use or disclosure of personal information, for a period of 12 months. The disclosures can be made to the Department of the Prime Minister and Cabinet and to the Office of the Official Secretary to the Governor-General for the purposes of their consideration of nominees for awards (such as those in the Australian honours system).

The TPID repealed Public Interest Determination No. 2 which had been in operation since 1991.

The Information Commissioner and Privacy Commissioner is considering the Home Affairs' application for a longer-term public interest determination.

Privacy (Credit Reporting) Code 2014 (Version 2)

The *Privacy (Credit Reporting) Code 2014* (CR Code) is a written code of practice about credit reporting that supplements the credit reporting provisions in the Privacy Act.

On 29 May 2018, the then acting Information Commissioner and acting Privacy Commissioner approved a variation of the CR Code. The variation was requested by the code developer, Australian Retail Credit Association (ARCA). The approved variation made a number of minor and technical amendments to the CR Code, including clarifying the grace period for disclosing repayment history information, the definition of 'consumer credit liability information', and requirements for notifying consumers about a default listing.

The varied CR Code was scheduled to commence on 1 July 2018. It must be included on the OAIC's Codes Register and registered on the Federal Register of Legislative Instruments.

The variation followed an independent review of the operation of the CR Code, conducted under paragraph 24.3 of the CR Code. Paragraph 24.3 requires the Australian Information Commissioner to initiate an independent review of the operation of the CR Code within three years of its commencement.

The OAIC engaged Pricewaterhouse Coopers (PwC) to seek feedback, through targeted and public consultation, on issues arising with regard to the interaction between

the Code and the Act; significant issues or concerns about the practical operation of the Code and any requirements of the CR Code which had not been complied with in practice. PwC's final report was published on 13 December 2017. The PwC review made recommendations and gave feedback on each of the CR Code provisions that were varied in the CR Code.

Some recommendations and important observations in the PwC review have not been addressed in the approved variations. The OAIC intends to consider these matters further in the 2018–19 financial year.

Privacy awareness

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

'2018 marks 30 years of the *Australian Privacy Act 1988*. Since then, there have been remarkable changes in the way personal information is put to use across the world. Utilising personal information to engage with businesses, government, and each other online is an everyday occurrence. At the same time, the public benefits of increased data analysis and data mobility to research, policy-making, and the Australian economy are being actively sought.

This has reinforced the vital importance of privacy, which is integral to building and maintaining people's trust in both government agencies and businesses in their handling of personal information.

Privacy today is founded on the principles of transparency and accountability. It is about ensuring individuals can exercise choice and control and that the actions of organisations reflect the value of personal information to individuals' wellbeing and dignity.

To that end — 2018 is the year a number of regulatory developments were introduced in Australia that enhance privacy governance across the public and private sector. The Notifiable Data Breaches scheme came into force in February, formalising a long-standing community expectation for organisations to notify individuals affected by data breaches that are likely to result in serious harm. In just under two months time, Australian Government agencies must comply with the Australian Government Agencies Privacy Code. Internationally, on 25 May the European Union's (EU's) General Data Protection Regulation takes effect for all Australian businesses operating in the EU.'

Angelene Falk, then acting Information Commissioner and acting Privacy Commissioner, in 'Welcome to Privacy Awareness Week. A message from the acting Commissioner, 2018'.

Reaching our audiences

This year we focused significant effort on preparing Australian Government agencies and businesses for the commencement of the NDB scheme in February 2018, and preparing agencies for the commencement of the Australian Government Agencies Privacy Code on 1 July 2018.

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

Speaking engagements

This year we participated in 51 speaking engagements aimed at privacy professionals.

Media

One of our aims this year was to increase media coverage of the NDB scheme and raise the public's awareness of privacy.

We achieved this as demonstrated by:

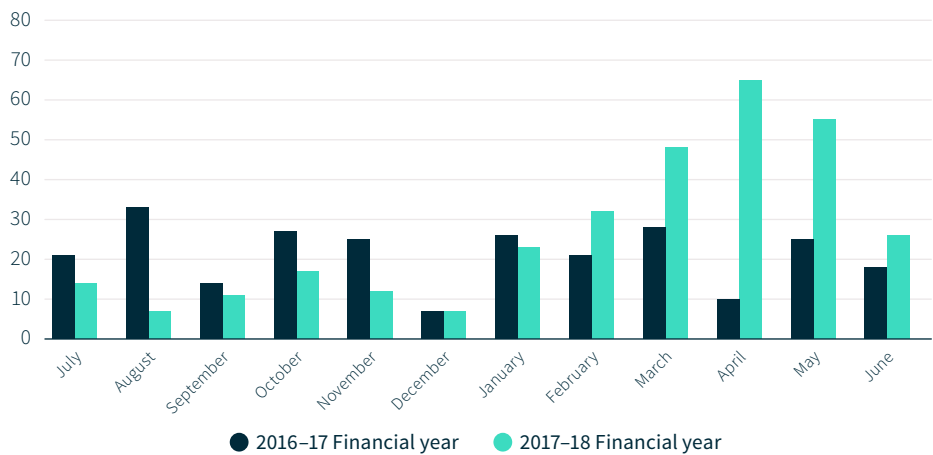
- An increase of 24% in media enquiries when compared with 2016–17.
- More than 310 mainstream media mentions during Privacy Awareness Week (compared to 250 in 2017).

The following graph shows the increase in reporting of privacy, and the spike when issues of community concern are covered, such as the commencement of an investigation into Facebook.

Table 6 — General privacy — media exposure

Received	2017-18	2016-17	% Change
Jul	14	21	-33%
Aug	7	33	-79%
Sep	11	14	-21%
Oct	17	27	-37%
Nov	12	25	-52%
Dec	7	7	0%
Jan	23	26	-12%
Feb	32	21	52%
Mar	48	28	71%
Apr	65	10	550%
May	55	25	120%
Jun	26	18	44%
Total	317	255	24%

Figure 3 — Media enquiries received



Freedom of Information (FOI)

Freedom of Information (FOI) provides a legally enforceable right of access to government documents. It applies to Australian Government ministers and most agencies, although the obligations of agencies and ministers are different.

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

Additional information regarding data collected from ministers and agencies subject to the FOI Act, and separately from the Administrative Appeals Tribunal, the

Commonwealth Ombudsman and our own records is included at Appendix D on page 152.

FOI Enquiries

We respond to enquiries from the public on FOI issues, including our Information Commissioner review (IC review) function. This year our enquiries line answered 1,339 telephone calls related to FOI, and responded to 584 written FOI enquiries. We also assisted eight in-person FOI enquiries. Just over 49% of all enquiries about FOI matters related to general processes for FOI applicants, including how to make an FOI request or complaint, or seek review of an FOI decision.

Table 7 — FOI enquiries by issue*

Issue	Number*
General processes	952
Jurisdiction	709
Processing by agency	174
Agency statistics	142
Access to general information	18
Access to personal information	18
Information Publication Scheme	10
Amendment and annotation	7
Vexatious application	6

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

Information Commissioner (IC) reviews

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

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

This year we experienced a significant increase in IC reviews, receiving 801 applications for review — a 27% increase over 2016–17.

Alongside the significant increase in the number of applications, the OAIC was able to finalise 610 IC reviews (an 18% increase compared to 2016–17 when 515 reviews were finalised). Of the 610 IC reviews finalised in 2017–18, 84% were finalised within 12 months, exceeding the target of 80% completed within 12 months.

Informal resolution

The OAIC encourages resolution of IC reviews by agreement between the parties where possible. In 2017–18, 487 IC reviews were finalised without a formal decision being made (80% of all IC reviews finalised).

The number of IC reviews finalised under section 55F by way of a written agreement between the parties to the IC review has more than tripled since 2016–17. In 2017–18, 42 IC reviews were finalised by agreement under section 55F, in comparison to 14 in 2016–17.

There were 155 IC reviews finalised after the applicant withdrew their request, following action taken by the agency to resolve the issues in the IC review (such as by issuing a decision and statement of reasons in deemed access refusal cases, or a revised decision under section 55G to give the applicant access to further documents or material), or following an appraisal by the OAIC of the merits of their case.

Information Commissioner (IC) review decisions under section 55K

Under section 55K of the FOI Act the Information Commissioner made 123 decisions during 2017–18 (20% of all IC reviews finalised). Of these:

- 37% set aside the decision under review (45 decisions).
- 8% varied the decision under review (10 decisions).
- 55% affirmed the decision under review (68 decisions).

Thirteen per cent of the reviewable decisions (nine decisions) affirmed had been revised under section 55G of the FOI Act during the IC review, giving greater

access to the documents sought. In 18% of decisions set aside and substituted (eight decisions), the agency had withdrawn certain exemption contentions during the course of the IC review.

The section 55K decisions published by the OAIC continue to be an important feature of the OAIC's work. The decisions address novel issues and build on existing jurisprudence in the FOI jurisdiction. They help agencies interpret the FOI Act and provide guidance on

the exercise of their powers and functions. The OAIC adopts a practical approach to its decision making and to its role in helping agencies meet their obligations under the FOI Act.

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

Some Information Commissioner decisions made during 2017–18 are highlighted below.

Case study 13 — Elstone Pty Limited and Civil Aviation Safety Authority (Freedom of information) [2018] AICmr 52 (28 May 2018)

The applicant sought access to a complaint that was made against its helicopter tour business, as well as the complainant's name or business name. On 24 August 2016, the Civil Aviation Safety Authority (CASA) identified one document within scope, and refused access to the document in full under sections 47E(d) and 47F of the FOI Act. On 20 February 2017, during the course of the IC review, CASA revised its decision under section 55G of the FOI Act to grant access to parts of the document.

On 17 May 2017, the Information Commissioner referred questions of law to the Federal Court of Australia (the Federal Court) with respect to the construction of section 55G. On 9 April 2018, the Federal Court decided in *Australian Information Commissioner v Elstone Pty Limited* [2018] FCA 463 that it lacked jurisdiction to determine the referred questions of law because there was no matter for consideration within the meaning of Chapter III of the Constitution. Accordingly, the then acting Information Commissioner proceeded to make her decision on the basis that the decision under review is CASA's decision of 24 August 2016, as varied on 20 February 2017.

The then acting Information Commissioner considered the document and agreed with CASA that disclosure of the relevant material that would identify the complainant, could discourage other individuals from raising safety concerns in the future and could reasonably be expected to have a substantial adverse effect on CASA's operations in carrying out its regulatory functions in relation to the safety of civil aviation. The then acting Information Commissioner also considered the public interest test, and was satisfied that disclosure would, on balance, be contrary to the public interest.

Case study 14 — Josh Taylor and Prime Minister of Australia (Freedom of information) [2018] AICmr 42 (21 March 2018)

The applicant sought access to all Wickr (instant messaging app) conversations between the then Prime Minister Malcolm Turnbull and former Prime Minister Kevin Rudd, regarding former Prime Minister Rudd seeking the government's nomination for Secretary-General of the United Nations. The Prime Minister decided to refuse access to the documents under section 24A of the FOI Act on the basis that they cannot be found or do not exist.

In making his decision, the Information Commissioner considered the nature of Wickr and found that users of the Wickr Me app can set the duration as to how long a message would last prior to its automatic deletion, up to a maximum of 6 days. The Information Commissioner noted that once a message has expired, the message would be securely destroyed from both the sender and recipient's devices, and that unless a backup of the message was made prior to the expiration of the message, it would be highly unlikely that the message would continue to be stored on the device or any other location.

Based on this, the Information Commissioner considered that undertaking searches within the app and any available backups for the documents would constitute all reasonable steps for the purposes of section 24A. In particular, the Information Commissioner noted that, based on the circumstances and the Prime Minister's evidence of searches and his submissions that there were no available backups of the apps, it was unlikely that the documents, if they existed, would be stored on the Prime Minister's phone or in any other location.

Case study 15 — Paul Farrell and Department of Home Affairs (Freedom of information) [2018] AICmr 27 (28 February 2018)

The Information Commissioner set aside the decision of the Department of Home Affairs (Home Affairs) to neither confirm nor deny the existence of documents regarding any disclosures made under section 19 of the *Australian Border Force Act 1995*. Home Affairs advised that if the documents were to exist they would be exempt under section 37(1) of the FOI Act.

The Information Commissioner found that the documents requested were not of 'such a kind' that they would be exempt under section 37(1). Accordingly, Home Affairs was not entitled to give notice to neither confirm nor deny the existence of the documents under section 25 when responding to the FOI request.

The Information Commissioner considered whether Home Affairs had discharged its onus in establishing the decision to invoke section 25 in response to the applicant's request. The Information Commissioner found that Home Affairs had not sufficiently demonstrated that exceptional circumstances existed. Accordingly, the Information Commissioner set aside the decision of Home Affairs to neither confirm nor deny the existence of the documents and substituted the decision that if documents were to exist, they would not be exempt as authorised under section 25.

Case study 16 — Justin Warren and Department of Human Services (Freedom of information) [2018] AICmr 16 (1 February 2018)

The applicant applied to the Department of Human Services (Human Services) for access to documents relating to the Pay As You Go data-matching initiative that was the subject of a Question on Notice from the Senate Community Affairs Legislation Committee Budget Estimates hearing on 3 June 2015. Human Services notified the applicant of its intention to impose a charge for the processing of the request. The applicant requested that Human Services reduce or waive the charge on public interest grounds. However, Human Services decided to impose a charge of \$510.

The applicant sought internal review and Human Services affirmed its decision on internal review. The applicant subsequently paid the charge and Human Services processed the request.

The applicant then sought IC review of Human Services' decision to impose a charge. Human Services submitted that the Information Commissioner did not have jurisdiction to review a charge that has been paid in full.

The Information Commissioner considered section 54L of the FOI Act, which provides that a person can seek IC review of an 'access refusal decision'. Section 53A(e) of the FOI Act provides that a decision under section 29 relating to imposition of a charge or the amount of a charge is an 'access refusal decision'.

Accordingly, the Information Commissioner was satisfied that a decision to impose a charge is an IC reviewable decision, despite the fact that the applicant has paid the charge in full. The Information Commissioner was also satisfied that Human Services had not discharged its onus under section 55D of the FOI Act to establish that the decision in respect of the charge is justified. The Information Commissioner decided that no charge should be imposed in relation to the applicant's request.

Case study 17 — Dan Conifer and the Department of the Treasury (Freedom of information) [2017] AICmr 133 (8 December 2017)

The applicant sought access to briefs, advice and/or submissions from the Department of the Treasury to the Treasurer in relation to negative gearing, and Labor's negative gearing and capital gains tax policies. The Treasury identified seven documents within scope and decided that one document was exempt in part under section 34(1)(c), six documents were exempt in part under section 47C and one document was exempt in part under section 47G.

On IC review, the then Information Commissioner agreed with the Treasury's application of sections 34(1)(c) and 47G to the documents. However, he did not agree that the relevant documents were exempt under section 47C. In particular, he noted that the Treasury did not identify or provide any detail on any particular practice, process or policy that could reasonably be impacted through disclosure. The Information Commissioner found that although the relevant documents were conditionally exempt, disclosure at this time would not be contrary to the public interest.

Procedures to be followed in IC reviews

In February 2018, the Information Commissioner issued a 'Direction as to certain procedures to be followed in IC reviews' (the procedure direction) under section 55(2)(e)(i) of the FOI Act. The procedure direction provides further clarity on what is expected from agencies and ministers during the IC review process and promotes the efficient and timely resolution of IC reviews. The procedure direction sets out the particular procedures that agencies and ministers must follow in respect of the production of documents, the provision of a statement of reasons where access has been deemed to be refused, and the provision of submissions during an IC review.

The procedure direction is to be read alongside the OAIC's 'Freedom of information regulatory action policy' (the FOI Regulatory Action Policy) and Part 10 of the Guidelines issued by the Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

The FOI Regulatory Action Policy was developed and published this year to inform the Australian community and Australian Government agencies and ministers covered by the FOI Act of the regulatory strategy and approach of the Information Commissioner with respect to FOI regulatory powers, including in undertaking IC reviews. The policy should be read together with Part 10 of the FOI Guidelines.

Part 10 of the FOI Guidelines, to which agencies must have regard in performing a function or exercising a power under the FOI Act, sets out in detail the process and underlying principles of IC review. Part 10 was updated this year to reflect legislative amendments by the *Norfolk Island Legislation Amendment Act 2015*, developments and discussions in recent IC review decisions and Information Commissioner processes in carrying out IC review functions, as well as to include references to the procedure direction and the FOI Regulatory Action Policy.

FOI Complaints

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

Part 11 of the FOI Guidelines provides the Information Commissioner's view that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation and the matter can be dealt with more appropriately and effectively in that manner. IC review will ordinarily be the more appropriate avenue for a person to seek review of the merits of an FOI decision, particularly an access refusal or access grant decision. This approach accounts for the relatively small number of FOI complaints received compared with IC review applications.

In 2017–18, the OAIC received 62 complaints and closed 29. This represents a 72% increase in lodgements compared with 2016–17 (36 FOI complaints received) and a 61% increase in finalisations compared with 2016–17 (18 FOI complaints finalised).

The most common complaints about the handling of FOI matters by agencies are charging practices, consultation with applicants under practical refusal provisions and agencies not meeting statutory timeframes.

Of the 29 FOI complaints finalised in 2017–18, the Information Commissioner finalised four investigations and made recommendations to be implemented by an agency in two of these investigations.

FOI Extensions of time

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

Where an agency or minister is unable to process an FOI request within the processing period, they are able to request an extension of time from the FOI applicant or the Information Commissioner.

Where the applicant agrees to an extension of time in writing, the agency or minister must advise the Information Commissioner of the agreement to extend the statutory processing time as soon as practicable.

An agency or minister can apply to the Information Commissioner for an extension of time to extend the processing period where an agency or minister is able to demonstrate that the processing of the FOI request has been delayed because the FOI request is voluminous or complex in nature (section 15AB) or where the agency or minister has been unable to process the request within the statutory timeframe and the agency or minister is deemed to have made a decision refusing the FOI request (section 15AC).

Table 8 — Overview of FOI extension of time notifications and requests received

Year	2015–16	2016–17	2017–18
Received	5,605	4,412	3,367
Closed	5,602	4,420	3,333

This year, we finalised 90.5% of extension of time applications within five working days.

Table 9 — Notifications and extension of time requests closed

Request type	2015–16	2016–17	2017–18
Section 15AA	5,171	3,808	2,762
Section 15AB	283	453	370
Section 15AC	102	112	122
Section 51DA	0	0	1
Section 54B	0	0	0
Section 54D	30	29	38
Section 54T	16	18	40
Total	5,602	4,420	3,333

Section 15AA — Notification of agreement between agency and applicant to extend time.

Section 15AB — Extension of time for complex or voluminous request.

Section 15AC — Extension of time where deemed refusal of FOI request.

Section 54B — Extension of time for internal review request.

Section 54D — Extension of time where deemed affirmation of original decision on internal review.

Section 54T — Extension of time for person to apply for IC review.

In deciding whether to grant an extension of time, the Information Commissioner considers the impact the extension of time will have on the applicant, whether the agency or minister has taken realistic steps to process the FOI request, and whether granting extra time is within the objects of the Act.

FOI Vexatious applicant declarations

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

During 2017–18, the Information Commissioner did not receive any applications from agencies under section 89K seeking to have a person declared a vexatious applicant. Two applications were finalised in 2017–18 after the applications were withdrawn by the agency.

FOI Awareness

FOI Guidelines

In January and February 2018, the Information Commissioner issued revised guidelines under section 93A of the FOI Act, which Australian Government ministers and agencies must have regard to when performing a function or exercising a power under the FOI Act. The revised parts include:

- Part 3 — Processing and deciding on requests for access.
- Part 7 — Amendment and annotation of personal records.
- Part 10 — Review by the Information Commissioner.
- Part 11 — Complaints and investigations.

FOI agency resources

In June 2018, the OAIC issued the revised FOI agency resource 14: Access to government information — administrative access. The OAIC sought comments from interested stakeholders about the readability and accessibility of the revised resource.

Newsletters

The OAIC issues a monthly e-newsletter to Government FOI contact officers who have subscribed to the Information Contact Officer Network (ICON). The monthly e-newsletter provides news, updates and information about FOI.

Events

The OAIC participated in various activities throughout the year to raise awareness about accessing government information and the role of the OAIC and its processes. We participated in the Australian Government Solicitor's FOI Practitioners' Forum and launched the first Right to Know Day digital campaign, which included awareness raising materials and a video from the Information Commissioner.

We also held an ICON information session in Canberra, which explored ongoing and emerging challenges in the FOI space and included an expert panel discussion.

Media

The Information Commissioner issued a joint media release with the Australian Information Access Commissioners about International Right to Know Day on 21 September 2017:

A citizen's right to access government-held information and data, participate in government decision making, and have transparency in how decisions are made is central to any effective democracy.

Right to Know Day is an opportunity for all Australians and New Zealanders to reflect on their access rights and the benefits of a more open, transparent and accountable government. It is also a reminder to government that greater access to government information and data can deliver better public services, strengthen economic outcomes and build public trust and confidence in the public sector.

Australia and New Zealand Information Access Commissioners unite for citizens' Right to Know

Joint Media Statement

21 September 2017

Information Publication Scheme

In 2017–18 the OAIC conducted an IPS survey with all Australian Government agencies subject to the FOI Act. The survey was conducted by ORIMA on behalf of the OAIC.

The survey reviewed the operation of the IPS in each agency and also provided agencies with an opportunity to comply with the requirement to conduct a review under section 9 of the FOI Act. Section 9 requires agencies to complete a review of the operation of the IPS within their agency, as appropriate from time to time and within five years of the commencement of the IPS, in conjunction with the Information Commissioner.

The information collected in the IPS Survey will be used by the OAIC to develop a high level report on the operation of the IPS across all Australian Government agencies and provide a comparative analysis with the results of the 2012 IPS Survey. The 2018 IPS Survey report will be published on the OAIC's website.

The information collected may also be used to assist the OAIC understand agencies' approaches to the publication of information and identify ways the OAIC can provide advice, assistance and training to agencies on the operation of the IPS in the future.

FOI Regulatory Action Policy

In 2017–18, the OAIC published an FOI Regulatory Action Policy that outlines and explains the Information Commissioner's approach to using FOI regulatory action powers. The policy covers all FOI powers and functions conferred on the Information Commissioner by the *Australian Information Commissioner Act 2010* and the FOI Act.

The policy should be read together with the FOI guidelines. The policy also outlines how the Information Commissioner works with agencies, ministers and regulators to promote access to information through regulatory action and undertakes public communication as part of FOI regulatory action.

FOI processing statistics received from Australian Government agencies and ministers

Below is a selection of the FOI request processing statistics provided by Australian Government agencies and ministers to the OAIC.

The number of FOI requests received declined 13% in 2017–18; from 39,519 in 2016–17 to 34,438. This decline was experienced in both requests for personal information and non-personal requests, with similar percentage falls across both types of requests. The decline in request numbers for personal information is in large part due to the introduction by the Department of Home Affairs of an administrative access scheme for access to personal information.

In 2017–18, 28,199 or 82% of all FOI requests were for documents containing personal information. This is the same proportion as in 2016–17 but a decrease when compared with 2015–16 (87%).

In 2017–18, the Department of Home Affairs, the Department of Human Services and the Department of Veterans' Affairs together continued to receive the majority of FOI requests (69% of the total). Of these, 96% were for personal information.

The percentage of FOI requests processed within the applicable statutory time period increased from 58% of all FOI requests in 2016–17 to 85% in 2017–18, largely due to the improvement in timeliness by the Department of Home Affairs.

The percentage of FOI requests granted in full decreased from 55% of all requests in 2016–17 to 50%. The number of requests refused increased from 10% of all FOI requests in 2016–17 to 16%.

The personal privacy exemption in section 47F of the FOI Act remains the most claimed exemption (43% of all exemptions claimed).

The total reported costs attributable to processing FOI requests in 2017–18 was \$52.2 million, a 17% increase on 2016–17 (\$44.8 million).

Australian Government agencies issued 4,128 notices advising of an intention to refuse a request for a practical refusal reason in 2017–18. This was a 163% increase on the number issued in 2016–17. Of these requests, 84% were subsequently refused or withdrawn; the proportion was 66% in 2016–17.

There was a 24% decrease in the total charges notified in 2017–18 and a 21% decrease in the total charges collected by Australian Government agencies (to \$115,863).

The total number of entries added to agency website disclosure logs in 2017–18 (1,104) is 15% higher than 2016–17, when 958 entries were added. This increase occurred despite there being a 13% decrease in the number of full or partial access grant decisions in 2017–18. However the proportion of entries from which members of the public can directly access disclosure log documents from agency websites has declined from 67% last year to 57%.

There was a 12% increase in internal review applications in 2017–18. Of the 733 decisions on internal review, 351 (48%) affirmed the original decision, 72 (10%) set aside the original decision and granted access in full, 217 (30%) granted access in part.

More detailed information is available in Appendix D on page 152.

3

Part 3

Management and accountability

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Corporate governance

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

Enabling legislation

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

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

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

Portfolio structure and responsible minister

The OAIC is a statutory authority within the Attorney-General's portfolio. The minister responsible is the Hon Christian Porter MP.

Executive

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

Risk management

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

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

Audit Committee

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

The Audit Committee is chaired by a member of the OAIC Executive and has two independent members. During the year the independent member from the Inspector-General of Intelligence and Security was replaced by the National Disability Insurance Scheme Agency. The second independent member is from the Australian Human Rights Commission (AHRC). Representatives from the Australian National Audit Office (ANAO) attend meetings of the Audit Committee as observers.

Corporate services

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

External scrutiny

In September 2017 the ANAO published its performance audit report into the Administration of the *Freedom of Information Act 1982* which was an across agency audit including the OAIC.

In our response to the report we said:

‘The OAIC welcomes external scrutiny of its operations and will seek to use the useful engagement we have had with the ANAO during the course of this audit, and the contents of the report, to assist us in our continuous endeavours to improve our operations in accordance with our statutory responsibilities to the benefit of the Australian community.

The OAIC also welcomes the acknowledgement in the report the OAIC has been through a sustained period of uncertainty between the 2014 and 2016 budgets, when responsibility for undertaking a large slice of the OAIC’s FOI functions and associated resourcing was withdrawn from the OAIC and distributed to other agencies. Now that that period is behind us the OAIC is pursuing all of its statutory FOI regulatory activity, taking into account our resourcing and balancing our priorities across all of our statutory functions.

The OAIC agrees with the ANAO’s recommendation to create an FOI regulatory action policy. The OAIC’s 2017–18 Corporate Plan contains a commitment to develop an FOI regulatory action policy. Although aspects of such a document are already contained in the FOI Guidelines the OAIC acknowledges that pulling this information together and expanding on it in a single policy document will assist agencies and the public better understand the OAIC’s approach to its FOI regulatory activity.’

The OAIC’s FOI regulatory action policy was published in February 2018 and is available on our website.

Human resources

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

In 2017–18, the OAIC continued to build capacity within the existing workforce, developing the necessary skillsets to meet the heightened demands for privacy and information management for the Australian public, government agencies and wider industry.

Our people

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

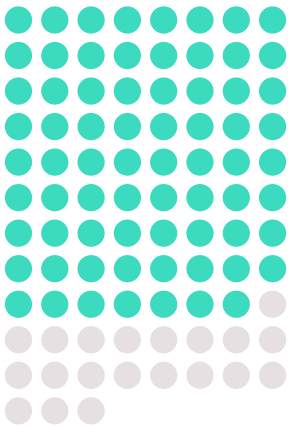
This year we had an average staffing level of 75. During the year turnover was approximately 20.5% for ongoing staff. This involved fifteen ongoing staff resigning, retiring or transferring to other Australian Government agencies. We had thirteen ongoing staff join the OAIC during the year. As of 30 June 2018, we had 81.2 full-time equivalent (FTE) staff, including ongoing and non-ongoing employees.

Table 10 — Staffing profile as at 30 June 2018

Classifications	Male	Female	Full-time	Part-time	Total ongoing	Total non-ongoing	Total
Statutory Office Holders*	0	0	0	0	0	0	0
SES Band 2	0	1	1	0	1	0	1
SES Band 1	1	1	1	1	2	0	2
Executive Level 2 (\$117,996–\$134,662)	1	8	5	4	8	1	9
Executive Level 1 (\$101,586–\$108,667)	5	17	14	8	19	3	22
APS 6 (\$80,607–\$88,764)	5	35	37	3	34	6	40
APS 5 (\$73,101–\$77,281)	3	5	4	4	3	5	8
APS 4 (\$65,570–\$69,671)	3	6	9	0	6	3	9
Total	18	73	71	20	73	18	91

*The Statutory Office Holder position was vacant following the retirement of the Australian Information Commissioner and was filled on a temporary basis from 24 March to 30 June 2018 (Angelene Falk was appointed to the position on 16 August 2018 for a three year term).

Employment statistics



Our staff

91
Total staff

Employment type

71 20
Full-time Part-time

Gender

73 18
Female Male

Diversity

22% 1.1%
Non-English speaking background Indigenous

Learning and development

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

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

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

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

Talking about performance (TAP)

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

Professional skills development

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

This year relevant staff attended specialist training in decision writing, administrative and public law, statutory conciliation and investigation, mediation, plain English language, managing unreasonable

complainant conduct, leadership and management, auditing skills and report writing.

Study and professional membership assistance

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

Benefits

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

- Flexible working arrangements including home-based work where appropriate.
- Employee assistance program.
- Extended purchase leave.
- Maternity and adoption leave.
- Parental leave.
- Leave for personal compelling reasons and exceptional circumstances.
- Access to paid leave at half pay.
- Flextime (APS staff).
- Study assistance.
- Support for professional and personal development.
- Healthy lifestyle reimbursement.
- Eyesight testing and reimbursement of prescription glasses.
- Family care rooms.
- Influenza vaccinations.

Workplace relations

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

In 2017–18, seven Executive members and other staff received performance pay or were under individual flexibility arrangements, Australian workplace agreements or common law contracts.

OAIC Consultation Forum

The OAIC Consultation Forum provides an opportunity for the OAIC, its employees and their representatives to meet and consider issues relating to working at the OAIC.

Statutory Office Holder and SES remuneration

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

Workplace diversity

Currently 22% of staff have a non-English speaking background and 1.1% identify as Indigenous.

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

Work health and safety

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

Procurement

In 2017–18, we complied with the government’s purchasing policies as stated in the Commonwealth Procurement Rules. We encourage competition, value for money, transparency and accountability.

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

In 2017–18, no contracts were exempt from reporting on AusTender on the basis that publishing contract details would disclose exempt matters under the FOI Act. All awarded contracts valued at \$100,000 (GST inclusive) or greater contained standard clauses granting the Auditor-General access to contractors’ premises.

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

During 2017–18, we entered into four consultancy contracts. The total actual expenditure for these contracts was \$239,693 (excluding GST). No consultancy contracts from previous periods were continued into this period.

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

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

Consultants

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

Typically, we only engage consultants to:

- Investigate or diagnose a defined issue or problem.
- Carry out defined reviews or evaluations.
- Provide independent advice, information or creative solutions to assist with our decision making.

Small business

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

Other requirements

Advertising and market research

During 2017–18 we conducted the following survey:

The OAIC entered into a contract with Orima Research to conduct the 2018 Information Publication Scheme (IPS) Survey of Australian Government agencies that are subject to the FOI Act. The survey was conducted by Orima on behalf of the OAIC.

The survey reviewed the operation of the IPS in each agency and also provided agencies with an opportunity to comply with the requirement to conduct a review under section 9 of the FOI Act. The total spend was \$92,393 (GST exclusive). The open tender was published on AusTender. Further information is on the OAIC website and the survey results will be published in the 2018–19 financial year.

Information on the value of contracts and consultancies is available on the AusTender website.

Grant programs

No grant programs took place during 2017–18.

Fraud

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

Memoranda of understanding

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

Disability reporting

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

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


Ecologically sustainable development and environment performance

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

Information Publication Scheme

As required by the FOI Act, we have an Information Publication Scheme entry on our website that provides information on our structure, functions, appointments, annual reports, consultation arrangements, FOI officer, information we routinely release following FOI requests and information we routinely provide to the Australian Parliament.

4



Part 4

Financial statements



INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

Opinion

In my opinion, the financial statements of the Office of the Australian Information Commissioner for the year ended 30 June 2018:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Office of the Australian Information Commissioner as at 30 June 2018 and its financial performance and cash flows for the year then ended.

The financial statements of the Office of the Australian Information Commissioner, which I have audited, comprise the following statements as at 30 June 2018 and for the year then ended:

- Statement by the Accountable Authority and Chief Finance Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement; and
- Notes to the financial statements, comprising a Summary of Significant Accounting Policies and other explanatory information.

Basis for Opinion

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

Accountable Authority's Responsibility for the Financial Statements

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

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

Auditor's Responsibilities for the Audit of the Financial Statements

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

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

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

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

Australian National Audit Office



Bola Oyetunji
Senior Executive Director
Delegate of the Auditor-General
Canberra
11 September 2018

Office of the Australian Information Commissioner

STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2018 comply with subsection 42(2) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act), and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Office of the Australian Information Commissioner will be able to pay its debts as and when they fall due.



Angelene Falk
Australian Information Commissioner

11 September 2018



Brenton Attard
Acting Chief Financial Officer

11 September 2018

Statement of Comprehensive Income

for the period ended 30 June 2018

	Notes	2018 \$'000	2017 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Expenses				
Employee Benefits	1.1A	9,481	8,674	9,507
Suppliers	1.1B	4,271	3,989	4,474
Depreciation and Amortisation	2.2A	530	501	440
Write-Down and Impairment of Assets	1.1C	-	2	-
Total expenses		14,282	13,166	14,421
Own-Source Income				
Own-source revenue				
Rendering of Services	1.2A	2,590	2,824	3,587
Other Revenue	1.2B	36	36	-
Total own-source revenue		2,626	2,860	3,587
Gains				
Other Gains	1.2C	1	1	33
Total gains		1	1	33
Total own-source income		2,627	2,861	3,620
Net cost of by services		(11,655)	(10,305)	(10,801)
Revenue from Government	1.2C	10,711	10,618	10,361
Surplus/(Deficit) attributable to the Australian Government		(944)	313	(440)
OTHER COMPREHENSIVE INCOME				
Items subject to subsequent reclassification to net cost of services				
Changes in asset revaluation surplus		19	3	-
Total other comprehensive income		19	3	-

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

Budget Variances Commentary

The major variances on the Statement of Comprehensive Income are depreciation and amortisation, rendering of services revenue, revenue from Government and the operating deficit.

A contributor to the Office of the Australian Information Commissioner's (OAIC) financial statement variances in general relates to the decision to internally fund various critical projects during the reporting period.

Rendering of services revenue reflects variations to memorandums of understanding with other government departments during the financial year. Those variations resulted in a reduction of revenue.

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

During the 2017–18 Portfolio Additional Estimates the OAIC received an additional \$350,000 as appropriated funding after the whole of government savings measure detailed at Note 3.1A.

The operating deficit relates to the above variances that were not known at the time of Budget preparation resulting in deficit after accounting for depreciation and amortisation.

Statement of Financial Position

as at 30 June 2018

	Notes	2018 \$'000	2017 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash	2.1A	589	2,711	893
Trade and Other Receivables	2.1B	5,072	3,588	3,057
Total financial assets		5,661	6,299	3,950
Non-financial assets				
Infrastructure, Plant and Equipment	2.2A	977	1,287	677
Intangibles	2.2A	610	648	469
Other Non-Financial Assets	2.2B	79	93	72
Total non-financial assets		1,666	2,028	1,218
Total assets		7,327	8,327	5,168
LIABILITIES				
Payables				
Suppliers	2.3A	1,174	1,011	576
Other Payables	2.3B	1,698	1,292	614
Total payables		2,872	2,303	1,190
Non-interest bearing liabilities				
Lease Incentives	2.4A	729	970	496
Total non-interest bearing liabilities		729	970	496
Provisions				
Employee Provisions	4.1A	1,745	2,148	1,893
Total provisions		1,745	2,148	1,893
Total liabilities		5,346	5,421	3,579
Net assets		1,981	2,906	1,589
EQUITY				
Contributed equity		2,013	2,013	2,013
Reserves		172	154	151
Retained surplus/(Accumulated deficit)		(205)	739	(575)
Total equity		1,981	2,906	1,589

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

Budget Variances Commentary

The major variances on the Statement of Financial Position are financial assets, non-financial assets, payables, non-interest bearing liabilities and equity. As noted on the Statement of Comprehensive Income, a contributing factor to these variations were the internally funded projects and activities during the reporting period.

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

Prepayments are the only other non-financial asset held by the OAIC and includes insurance premium and annual subscription costs. The payables variance arose the timing difference for supplier payables at year-end and the above mentioned projects.

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

Statement of Changes in Equity

for the period ended 30 June 2018

	2018 \$'000	2017 \$'000	Original Budget \$'000
CONTRIBUTED EQUITY			
Opening balance			
Balance carried forward from previous period	2,013	2,013	2,013
Adjusted opening balance	2,013	2,013	2,013
Closing balance as at 30 June	2,013	2,013	2,013
RETAINED EARNINGS			
Opening balance			
Balance carried forward from previous period	739	430	(135)
Other Adjustments	-	(4)	-
Adjusted opening balance	739	426	(135)
Comprehensive income			
Surplus/(Deficit) for the period	(944)	313	(440)
Other comprehensive income	-	-	-
Total comprehensive income	(944)	313	(440)
Closing balance as at 30 June	(205)	739	(575)
ASSET REVALUATION RESERVE			
Opening balance			
Balance carried forward from previous period	154	151	151
Adjusted opening balance	154	151	151
Comprehensive income			
Other comprehensive income	19	3	-
Total comprehensive income	19	3	-
Transfers between equity components	-	-	-
Closing balance as at 30 June	173	154	151
TOTAL EQUITY			
Opening balance			
Balance carried forward from previous period	2,906	2,594	2,029
Other Adjustments	-	(4)	-
Adjusted opening balance	2,906	2,590	2,029

Statement of Changes in Equity (continued)

for the period ended 30 June 2018

	2018 \$'000	2017 \$'000	Original Budget \$'000
Comprehensive income			
Surplus/(Deficit) for the period	(944)	313	(440)
Other comprehensive income	19	3	-
Total comprehensive income	(925)	316	(440)
Transactions with owners			
Contributions by owners			
Total transactions with owners	-	-	-
Closing balance as at 30 June	1,981	2,906	1,589

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

Accounting Policy

Equity Injections

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

Budget Variances Commentary

The major variance on the Statement of Changes in Equity relates to retained earnings, comprehensive income and other comprehensive income.

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

Other comprehensive income relates entirely to the asset revaluation reserve and is determined by independent valuation of the OAIC's infrastructure, plant and equipment at 30 June each year. The movement of asset values cannot be reliably estimated at the time of original budget preparation.

Cash Flow Statement

for the period ended 30 June 2018

	Notes	2018 \$'000	2017 \$'000	Original Budget \$'000
OPERATING ACTIVITIES				
Cash received				
Appropriations		10,711	10,618	10,361
Cash Transferred from the Official Public Account		1,500	4,636	-
Rendering of services		3,395	2,711	3,587
Net GST received		411	308	110
Total cash received		16,017	18,273	14,058
Cash used				
Employees		(9,879)	(8,337)	(10,597)
Suppliers		(4,769)	(4,523)	(4,451)
Section 74 receipts transferred to OPA		(3,328)	(3,148)	(2,173)
Total cash used		(17,976)	(16,008)	(17,221)
Net cash from/(used by) operating activities		(1,959)	2,265	(3,163)
INVESTING ACTIVITIES				
Cash used				
Purchase of infrastructure, plant and equipment		-	(219)	(65)
Purchase of intangibles		(163)	-	-
Total cash used		(163)	(219)	(65)
Net cash from/(used by) investing activities		(163)	(219)	(65)
FINANCING ACTIVITIES				
Net cash from/(used by) financing activities		-	-	-
Net increase/(decrease) in cash held		(2,122)	2,046	(3,228)
Cash and cash equivalents at the beginning of the reporting period		2,711	665	4,121
Cash and cash equivalents at the end of the reporting period	2.1A	589	2,711	893

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

Budget Variances Commentary

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

As noted on the commentary on the Statement of Comprehensive Income and Statement of Financial Position, the OAIC internally fund various critical projects completed during the reporting period which impacted on cash received and cash used activities as well as the purchase of intangibles.

Cash received activities were further varied due to increased funding received during the 2017-18 Additional Estimates process and variations to memorandums of understanding.

Overview

Objectives of the Office of the Australian Information Commissioner

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

During the reporting period the OAIC sought approval from Government to increase its original budgeted break-even position, adjusted for depreciation and amortisation expense, and undertake various critical and time sensitive projects which were internally funded.

The OAIC is structured to meet the following outcome:

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

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

The Basis of Preparation

The financial statements are general purpose financial statements and are required by section 42 of the Public Governance, Performance and Accountability Act 2013. The financial statements have been prepared in accordance with:

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

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

New Accounting Standards

Adoption of New Australian Accounting Standard Requirements

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

Future Australian Accounting Standard Requirements

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

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

Taxation

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

Events After the Reporting Period

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

¹ All other new, revised, amending standards and interpretations that were issued prior to the sign-off date and are applicable to future reporting period(s) are not expected to have a future material impact on the OAIC’s financial statements.

Financial Performance

This section analyses the financial performance of the Office of the Australian Information Commissioner for the year ended 2018

1.1 Expenses

	2018	2017
	\$'000	\$'000

1.1A: Employee Benefits

Wages and salaries	7,387	6,730
Superannuation		
Defined contribution plans	861	808
Defined benefit plans	381	356
Leave and other entitlements	735	743
Separation and redundancies	2	-
Other employee expenses	115	37
Total employee benefits	9,481	8,674

Accounting Policy

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

1.1B: Suppliers

Goods and services supplied or rendered

Insurance	22	21
Office consumables	23	21
Official travel	240	281
Printing and publications	44	75
Professional services and fees	2,646	2,295
Property outgoings	317	246
Reference materials, subscriptions and licenses	82	204
Staff training	239	143
Telecommunications	20	27
Other	89	110
Total goods and services supplied or rendered	3,722	3,423

1.1 Expenses (continued)

	2018 \$'000	2017 \$'000
Goods supplied	149	299
Services rendered	3,573	3,124
Total goods and services supplied or rendered	3,722	3,423
Other suppliers		
Operating lease rentals in connection with		
Related parties	-	-
Subleases	531	531
Workers compensation expenses	18	35
Total other suppliers	549	566
Total suppliers	4,271	3,989

Leasing commitments

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

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

Within 1 year	1,266	1,220
Between 1 to 5 years	2,553	3,813
Total operating lease commitments	3,819	5,033

1.1C: Write-Down and Impairment of Assets

Impairment on assets	-	2
Total write-down and impairment of assets	-	2

Accounting Policy

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

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

1.2 Own-Source Revenue and gains

	2018	2017
	\$'000	\$'000

OWN-SOURCE REVENUE**1.2A: Rendering of Services**

Rendering of services	2,590	2,824
Total sale of goods and rendering of services	2,590	2,824

Accounting Policy

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

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

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

1.2B: Other Revenue

Resources received free of charge

Remuneration of auditors	36	36
Total other revenue	36	36

Accounting Policy*Resources Received Free of Charge*

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

1.2 Own-Source Revenue and gains (continued)

	2018	2017
	\$'000	\$'000

GAINS

1.2C: Other Gains

Sale of assets	1	1
Total other gains	1	1

Accounting Policy

Sale of Assets

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

1.2C: Revenue from Government

Appropriations		
Departmental appropriations	10,711	10,618
Total revenue from Government	10,711	10,618

Accounting Policy

Revenue from Government

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

Financial Position

This section analyses the Office of the Australian Information Commissioner's assets used to conduct its operations and the operating liabilities incurred as a result. Employee related information is disclosed in the People and relationships section.

2.1 Financial Assets

	2018 \$'000	2017 \$'000
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2.1A: Cash

Cash on hand and at bank	589	2,711
Total cash and cash equivalents	589	2,711

Accounting Policy

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

2.1B: Trade and Other Receivables

Goods and services receivables

Goods and services	652	1,031
Total goods and services receivables	652	1,031

Appropriations receivables

Appropriation receivable	4,325	2,497
Total appropriations receivables	4,325	2,497

Other receivables

GST Receivable from the Australian Taxation Office	95	60
Total other receivables	95	60
Total trade and other receivables (gross)	5,072	3,588

Total trade and other receivables (net)

5,072	3,588
--------------	--------------

Trade and other receivables (net) expected to be recovered

No more than 12 months	5,072	3,588
Total trade and other receivables (net)	5,072	3,588

Accounting Policy

Receivables

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

2.2 Non-Financial Assets

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

Reconciliation of the opening and closing balances of Infrastructure, plant and equipment for 2018

	Leasehold Improvements \$'000	Computer, Plant and Equipment \$'000	Computer, Plant and Equipment – Work in Progress \$'000	Total \$'000
As at 1 July 2017				
Gross book value	1,248	39	-	1,287
Accumulated depreciation, amortisation and impairment	-	-	-	-
Total as at 1 July 2017	1,248	39	-	1,287
Additions				
Purchase	-	-	-	-
Work-in-progress transfer	-	-	-	-
Revaluations and impairments recognised in other comprehensive income	17	2	-	19
Depreciation and amortisation	(312)	(17)	-	(329)
Disposals	-	-	-	-
Total as at 30 June 2018	953	24	-	977
Total as at 30 June 2018 represented by				
Gross book value	953	24	-	977
Accumulated depreciation, amortisation and impairment	-	-	-	-
Total as at 30 June 2018	953	24	-	977

No indicators of impairment were found for intangibles.

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

2.2 Non-Financial Assets (continued)

Revaluations of non-financial assets

All revaluations were conducted in accordance with the revaluation policy stated at Note 2.2. On 30 June 2018, an independent valuer conducted the revaluations.

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

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

2.2 Non-Financial Assets (continued)

Reconciliation of the opening and closing balances of intangibles for 2018

	Intangibles \$'000	Total \$'000
As at 1 July 2017		
Gross book value	2,619	2,619
Accumulated depreciation, amortisation and impairment	(1,971)	(1,971)
Total as at 1 July 2017	648	648
Additions	43	43
Work-in-progress transfer	120	120
Depreciation and amortisation	(201)	(201)
Total as at 30 June 2018	610	610
Total as at 30 June 2018 represented by		
Gross book value	2,782	2,782
Accumulated depreciation, amortisation and impairment	(2,172)	(2,172)
Total as at 30 June 2018 represented by	610	610

No indicators of impairment were found for intangibles.

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

Reconciliation of the opening and closing balances of intangibles for 2017

	Intangibles \$'000	Total \$'000
As at 1 July 2016		
Gross book value	2,619	2,619
Accumulated depreciation, amortisation and impairment	(1,772)	(1,772)
Total as at 1 July 2016	847	847
Depreciation and amortisation	(199)	(199)
Total as at 30 June 2017	648	648
Total as at 30 June 2017 represented by		
Gross book value	2,619	2,619
Accumulated depreciation, amortisation and impairment	(1,971)	(1,971)
Total as at 30 June 2017 represented by	648	648

Accounting Policy

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

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

Asset Recognition Threshold

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

Revaluations

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

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

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

Depreciation

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

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

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

	2018	2017
Leasehold improvements	Lease term	Lease term
Computer, plant and equipment	4 to 10 years	4 to 10 years

Impairment

All assets were assessed for impairment at 30 June 2018. Where indications of impairment exist, the asset’s recoverable amount is estimated and an impairment adjustment made if the asset’s recoverable amount is less than its carrying amount.

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

Derecognition

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

Intangibles

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

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

All software assets were assessed for indications of impairment as at 30 June 2018.

Accounting Judgements and Estimates

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

2.2 Non-Financial Assets (continued)

	2018 \$'000	2017 \$'000
2.2B: Other Non-Financial Assets		
Prepayments	79	93
Total other non-financial assets	79	93
Other non-financial assets expected to be recovered		
No more than 12 months	79	93
Total other non-financial assets	79	93

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

2.3 Payables

	2018 \$'000	2017 \$'000
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2.3A: Suppliers

Trade creditors and accruals	848	644
Rent Payable	326	367
Total suppliers	1,174	1,011

Suppliers expected to be settled

No more than 12 months	901	707
More than 12 months	273	304
Total suppliers	1,174	1,011

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

2.3B: Other Payables

Salaries and wages	71	54
Superannuation	11	11
Other employee expenses	5	16
Revenue received in advance	1,611	1,211
Total other payables	1,698	1,292

Other payables to be settled

No more than 12 months	1,698	1,292
Total other payables	1,698	1,292

2.4 Non-Interest Bearing Liabilities		
	2018	2017
	\$'000	\$'000

2.4A: Non-Interest Bearing Liabilities

Lease incentives	729	970
Total lease incentives	729	970
Minimum lease payments expected to be settled		
Within 1 year	242	228
Between 1 to 5 years	487	742
Total lease incentives	729	970

Accounting Policy
Refer to Note 1.1.B

Funding

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

3.1 Appropriations

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

Annual Appropriations for 2018

	Annual Appropriation ¹ \$'000	Adjustments to appropriation ² \$'000	Total appropriation \$'000	Appropriation applied in 2018 (current and prior years) \$'000	Variance ³ \$'000
Departmental					
Ordinary annual services	10,711	566	11,277	(14,377)	(3,100)
Total departmental	10,711	566	11,277	(14,377)	(3,100)

1 In 2017–18, there was an amount of \$29,000 withheld (Section 51 of the PGPA Act) appropriation relating to Attorney-General's Portfolio efficiencies.

2 Adjustments including for PGPA Act Section 74 receipts.

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

3.1 Appropriations (continued)

Annual Appropriations for 2017

	Annual Appropriation ¹ \$'000	Adjustments to appropriation ² \$'000	Total appropriation \$'000	Appropriation applied in 2018 (current and prior years) \$'000	Variance ³ \$'000
Departmental					
Ordinary annual services	10,618	2,631	13,249	(12,689)	560
Total departmental	10,618	2,631	13,249	(12,689)	560

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

2 Adjustments including for PGPA Act Section 74 receipts.

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

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

	2018 \$'000	2017 \$'000
Departmental	3,328	-
Appropriation Act (No.1) 2017–18		
Appropriation Act (No.1) 2016–17	997	2,497
Cash held by the OAIC	589	2,711
Total departmental	4,914	5,208

3.2 Net Cash Appropriation Arrangements		
	2018 \$'000	2017 \$'000
Total comprehensive income/(loss) less depreciation/amortisation expenses previously funded through revenue appropriations	(414)	814
Plus: depreciation/amortisation expenses previously funded through revenue appropriation	(530)	(501)
Total comprehensive income - as per the Statement of Comprehensive Income	(944)	313

People and relationships

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

4.1A: Employee Provisions		
	2018 \$'000	2017 \$'000
Leave	1,745	2,148
Total employee provisions	1,745	2,148
Employee provisions expected to be settled		
No more than 12 months	1,339	1,690
More than 12 months	406	458
Total employee provisions	1,745	2,148

Accounting policy

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

Leave

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

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

The liability for long service leave has been determined by reference to the work of an actuary performed for the Department of Finance (DoF) and summarised in the Standard Parameters for use in 2015–16 Financial Statements published on the DoF website. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and Redundancy

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

Accounting policy (continued)

Superannuation

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

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

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

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

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

Accounting Judgements and Estimates

The long service leave has been estimated in accordance with the FRR taking into account expected salary growth, attrition and future discounting using the government bond rate.

4.2 Key Management Personnel Remuneration

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the OAIC, directly or indirectly, including any director (whether executive or otherwise) of the OAIC. The OAIC has determined the key management personnel to be the Australian Information Commissioner, Senior Executive Service Officers and the Chief Financial Officer. Key management personnel remuneration is reported in the table below:

	2018 \$'000	2017 \$'000
Short-term employee benefits	1,186	958
Post-employment benefits	169	119
Other long-term employee benefits	21	115
Termination benefits	393	-
Total key management personnel remuneration expenses¹	1,769	1,192

The total number of key management personnel that are included in the above table are 4 (2018: 4).

1 The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the entity.

4.3 Related Party Disclosures

Related party relationships:

The OAIC is an Australian Government controlled entity. Related parties to this entity are Key Management Personnel including the Portfolio Minister and Executive, and other Australian Government entities.

Transactions with related parties:

Given the breadth of Government activities, related parties may transact with the government sector in the same capacity as ordinary citizens. Such transactions include the payment or refund of taxes, receipt of a Medicare rebate or higher education loans. These transactions have not been separately disclosed in this note.

The following transactions with related parties occurred during the financial year:

Significant transactions with related parties can include:

- the payments of grants or loans;
- purchases of goods and services;
- asset purchases, sales transfers or leases;
- debts forgiven; and
- guarantees.

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the entity, it has been determined that there are no related party transactions to be separately disclosed.

Managing uncertainties

This section analyses how the Office of the Australian Information Commissioner manages financial risks within its operating environment.

5.1 Contingent Assets and Liabilities

Quantifiable Contingencies

As at 30 June 2018 the Office of the Australian Information Commissioner had no quantifiable contingent liabilities.

Unquantifiable Contingencies

As at 30 June 2018 the Australian Information Commissioner (AIC) was a respondent to four (4) ongoing matters in the Administrative Appeals Tribunal (AAT), a respondent in one (1) matter before the Federal Circuit Court (FCC), and a respondent in three (3) matters before the Federal Court of Australia (FCA).

The four (4) matters before the federal courts in which the AIC was a respondent are Administrative Decisions (Judicial Review) Act 1977 (ADJR) reviews of decisions to finalise privacy complaints, privacy determinations, Information Commissioner reviews and decisions on FOI requests to the OAIC.

Although the federal courts may award costs, the AIC's exposure to a costs order is unlikely in all matters, based on current legal advice. In any case, it is not possible to estimate the amounts of payment(s) that may be required in relation to matters where a costs order may materialise at the conclusion of the matter.

In relation to the four (4) matters before the Administrative Appeals Tribunal, three (3) are in relation to determinations made by the AIC under section 52 of the Privacy Act 1988 and the other in relation to an FOI request decision by the OAIC. However, as the Tribunal is a 'no costs' jurisdiction consideration of contingent liabilities is not necessary in these matters.

Accounting Policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

5.2 Financial Instruments

	2018	2017
	\$'000	\$'000

5.2A: Categories of Financial Instruments

Financial Assets

Receivables

Cash on hand and at bank	589	2,711
Trade and other receivables	651	1,031
Total receivables	1,240	2,711
Total financial assets	1,240	3,742

Financial Liabilities

Other financial liabilities

Trade creditors and accruals	1,174	1,011
Total financial liabilities measured at amortised cost	1,174	1,011
Total financial liabilities¹	1,174	1,011

1 Carrying amount is equal/approximate to fair value.

Accounting Policy

Financial assets

The OAIC classifies its financial assets in the following categories as receivables.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. Financial assets are recognised and derecognised upon trade date.

Effective Interest Method

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

Receivables

Trade and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'receivables'. Receivables are measured at amortised cost using the effective interest method less impairment.

Impairment of Financial Assets

Financial assets are assessed for impairment at the end of each reporting period.

Financial assets held at cost – if there is objective evidence that an impairment loss has been incurred, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

Financial liabilities

Financial liabilities are classified as other financial liabilities. Financial liabilities are recognised and derecognised upon trade date.

Other Financial Liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs. These liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective interest basis.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

5.3 Fair Value Measurement

The following tables provide an analysis of assets and liabilities that are measured at fair value.

The different levels of the fair value hierarchy are defined below.

Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities that the entity can access at measurement date.

Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3: Unobservable inputs for the asset or liability.

Accounting Policy

The OAIC deems transfers between levels of the fair value hierarchy to have occurred at the end of the reporting period. There were no transfers in or out of any levels during the reporting period.

5.3A: Fair Value Measurement

	2018 \$'000	2017 \$'000	Category (Level 1, 2 or 3)	Valuation Technique(s) and Inputs Used
Non-financial assets¹				
Infrastructure, plant and equipment	977	1,287	2	Market approach. Market replacement cost less estimate of written down value of asset used.

1 There was no non-financial assets where the highest and best use differed from its current use during the reporting period.

5

Part 5

Appendices

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Appendix A: Agency resource statement and resources for outcomes

Table A.1 — Office of the Australian Information Commissioner resource statement 2017–18*

		Actual available appropriation for 2017–18 \$'000	Payments made 2017–18 \$'000	Balance remaining for 2017–18 \$'000
		(a)	(b)	(a) - (b)
Ordinary Annual Services ¹				
Departmental appropriation		14,794	9,880	4,914
Total		14,794	9,880	4,914
Administered expenses		—	—	
Total ordinary annual services	A	14,794	9,880	
Other services				
Administered expenses		—	—	
Departmental non-operating		—	—	
Administered non-operating		—	—	
Total		—	—	
Total other services	B	—	—	
Total available annual appropriations and payments				
Special appropriations		—	—	
Special appropriations limited by criteria/entitlement		—	—	
Total special appropriations	C	—	—	
Special Accounts		—	—	
Total Special Account	D	N/A	N/A	
Total resourcing and payments A + B + C + D		14,794	9,880	

	Actual available appropriation for 2017–18 \$'000	Payments made 2017–18 \$'000	Balance remaining for 2017–18 \$'000
Less appropriations drawn from annual or special appropriations above and credited to special accounts	N/A	N/A	
And/or payments to corporate entities through annual appropriations	N/A	N/A	
Total net resourcing and payments for the Office of the Australian Information Commissioner	14,794	9,880	

1 Appropriation Act (No.1) 2017–18 and Appropriation Act (No.3) 2017–18. Includes prior year departmental appropriation and section 74 Retained Revenue Receipts.

* All figures are GST exclusive.

Table A.2 — Office of the Australian Information Commissioner resource statement 2017–18

	Budget 2017–18 \$'000	Actual expenses 2017–18 \$'000	Variation 2017–18 \$'000
	(a)	(b)	(a) - (b)
Outcome 1			
<i>Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of information commissioner, freedom of information and privacy functions</i>			
Program 1.1			
Complaint handling, compliance and monitoring, and education and promotion			
Administered expenses	—	—	—
Departmental expenses			
Departmental appropriation ¹	14,607	13,752	855
Special appropriations	—	—	—
Special Accounts	—	—	—
Expenses not requiring appropriation in the Budget year	517	530	(13)
Total for Program 1.1	15,124	14,282	842
Outcome 1 Totals by appropriation type			
Administered Expenses	—	—	—
Departmental expenses			
Departmental appropriation ¹	14,607	13,752	855
Special appropriations	—	—	—
Special Accounts	—	—	—
Expenses not requiring appropriation in the Budget year	517	530	(13)
Total expenses for Outcome 1	15,124	14,282	842
	2017–18	2017–18	
Average Staffing Level (number)	75	75	—

1 Departmental Appropriation combines Ordinary annual services (Appropriation Act Nos. 1 and 3) and Retained Revenue Receipts under section 74 of the PGPA Act 2013.

Appendix B: Memoranda of understanding

Australian Bureau of Statistics

This year we continued to provide tailored privacy advice under an MOU with the Australian Bureau of Statistics (ABS).

For this service, we received \$175,000.00 (GST exclusive) from the ABS.

Australian Digital Health Agency

This year we entered into an MOU with the Australian Digital Health Agency to provide support and assistance on privacy matters relating to both the Healthcare Identifiers Service (HI Service) and My Health Record system.

For the HI Service, these services included:

- Responding to privacy enquiries.
- Conducting a privacy assessment.
- Providing guidance material.
- Monitoring and participating in digital health developments.

For the My Health Record system, these services included:

- Responding to enquiries and complaints relating to the privacy aspects of the My Health Record system.
- Investigating acts and practices that may have been a contravention of the My Health Record system.
- Receiving data breach notifications and provided advice.

- Conducting privacy assessments.
- Providing guidance material for individuals and participants in the My Health Record system.
- Liaising and coordinating on privacy related matters and activities with key stakeholders.
- Preparing relevant communication and media materials.
- Providing policy and legislation advice.
- Monitoring and participating in digital health developments.

For the 2017–18 financial year, the value of the MOU was \$2,076,649.94 (GST exclusive).

For further information on our activities under this MOU, refer to the *Annual Report of the Australian Information Commissioner's activities in relation to digital health 2017–18* (available on the OAIC website no later than 28 November 2018).

Australian Human Rights Commission

The Australian Human Rights Commission (AHRC) continued to provide a number of corporate services to our office this year. The corporate services included financial, administrative, information technology and human resource related tasks. As a part of this, we also sub-let premises in Sydney from the AHRC.

For the corporate services we paid \$932,206 (GST exclusive), and for the premises (including outgoings) we paid \$1,071,711 (GST exclusive) to the AHRC.

ACT Government

As a part of our MOU with the ACT Government we continued to provide privacy services to ACT public sector agencies. These services included:

- Handling privacy complaints and enquiries about ACT public sector agencies in relation to the *Information Privacy Act 2014* and its Territory Privacy Principles (TPPs).
- Providing policy and legislation advice.
- Providing advice on data breach notifications, where applicable.
- Carrying out a privacy assessment.
- Providing access to the OAIC's Privacy Professional Network meetings.

For these services, we received \$175,145.78 (GST exclusive) from the ACT Government.

For further information on our activities under this MOU, refer to the *Memorandum of Understanding with the Australian Capital Territory for the provision of privacy services 2017–18 Annual Report* (available on the OAIC website no later than 1 November 2018).

Department of Education and Training

We continued to support the Department of Education and Training with their Student Identifier initiative, providing expert and timely advice on privacy matters. Our services to the department this year included:

- Developing the content for four editions of the TRANSPARENT privacy newsletter for publication on the Unique Student Identifier website.
- Responding to enquiries and complaints relating to the privacy aspects of the Student Identifier initiative.
- Conducting an online assessment of five Registered Training Organisations against APPs 1 and 5.

For these services, we received \$164,000.00 (GST exclusive).

Department of Home Affairs

Under our MOU with the Department of Home Affairs we conducted a Passenger Name Record (PNR) data related assessment which considered the use, disclosure and security of personal information in accordance with APPs 6 and 11. The assessment focused on the handling of PNR data in Home Affairs' Connected Information Environment.

For these services, we received \$65,000.00 (including GST).

Note: The agreement between Australia and the European Union (EU) on the processing and transfer of Passenger Name Record data states that 'The Australian Customs and Border Protection Service has arrangements in place under the Privacy Act for the Information Commissioner to undertake regular formal audits of all aspects of Australian Customs and Border Protection Service's EU-sourced PNR data use, handling and access policies and procedures'.

Department of Human Services

As a part of our ongoing work with the Department of Human Services (DHS), we provided them with general privacy services and support. In our work we:

- Provided policy advice to DHS on data-matching and other privacy enquiries.
- Provided policy advice on the operation of the APPs with respect to various DHS activities and proposals.

For these services, we received \$220,000.00 (GST exclusive) from the Department of Human Services.

Appendix C: Privacy statistics

Table C.1 — Issues in privacy complaints: APPs

Issues*	Number of Complaints	%
Use or disclosure	819	27.8
Security of personal information	591	20.1
Access to personal information	497	16.9
Collection	331	11.2
Quality of personal information	276	9.4
Direct marketing	138	4.7
Notification of collection	91	3.1
Openness and transparency	28	1.0
Correction	41	1.4
Cross-border disclosure	10	0.3
Anonymity and pseudonymity	7	0.2
Unsolicited personal information	7	0.2
Government identifiers	3	0.1

*Each complaint may include more than one issue.

Table C.2 — The main remedies agreed in conciliated privacy complaints in 2017–18

Remedy*	Jurisdiction				Total
	Privacy Principles**	Credit reporting	Spent Convictions	My Health Records	
Record amended	164	101	0	0	265
Compensation	174	22	0	0	196
Access provided	181	8	0	0	189
Other or confidential	150	19	2	3	174
Apology	152	5	0	0	157

*Each complaint resolved may involve more than one remedy type.

**Includes Australian Privacy Principles, National Privacy Principles, Information Privacy Principles and ACT Territory Privacy Principle complaints.

Table C.3 — Compensation amounts in closed privacy complaints

Compensation Amounts	Jurisdiction				Total
	Privacy Principles**	Credit reporting	Spent Convictions	TFN	
Up to \$1,000	56	2	0	0	58
\$1,001 to \$5,000	77	13	0	0	90
\$5,001 to \$10,000	21	7	0	0	28
Over \$10,001	20	0	0	0	20

**Includes Australian Privacy Principles, National Privacy Principles and Information Privacy Principles complaints.

Privacy assessments and digital assessments

Table C.4 — Privacy assessments

Privacy assessment subject	No. entities assessed	Year opened	Date closed
1 Department of Home Affairs (previously DIBP) — contractual arrangements	1	2015–16	Aug–17
2 Tax file numbers publishing agencies	7	2016–17	Sept–17
3 iiNet — requests for information by law enforcement agencies — APP 11	1	2016–17	Nov–17
4 ACT Government — Access Canberra	1	2016–17	Dec–17
5 Unique Student Identifier — Registered Training Organisations	5	2017–18	Jan–18
6 Department of Home Affairs (previously DIBP) — third party provider for SmartGate systems	1	2017–18	Apr–18
7 Document Verification Service — gateway service providers	2	2016–17	Mar–18
8 Department of Home Affairs (previously DIBP) — SmartGate APP 12	1	2016–17	May–18
9 Department of Home Affairs (previously DIBP) (third party provider for advance passenger processing)	1	2016–17	Ongoing
10 Loyalty program	2	2016–17	Ongoing
11 Department of Home Affairs (previously DIBP) — passenger name record	1	2016–17	Ongoing
12 Data retention scheme — Telecommunications service provider 1	1	2017–18	Ongoing
13 Data retention scheme — Telecommunications service provider 2	1	2017–18	Ongoing
14 Department of Home Affairs (previously DIBP) — Connected Information Environment	1	2017–18	Ongoing
15 ACT Government — ACT Housing	1	2017–18	Ongoing

Table C.5 — Digital health assessments

Privacy assessment subject	No. entities assessed	Year opened	Date closed
Department of Human Services as a contractor of the My Health Record System Operator	1	2016–17	Nov–17
Handling of Individual Health Identifiers by a private healthcare operator	1	2017–18	Ongoing
Australian Digital Health Agency — handling of personal information	1	2017–18	Ongoing

Table C.6 — Enhanced Welfare Payment Integrity (data matching) assessments

Privacy assessment subject	No. entities assessed	Year opened	Date closed
Department of Human Services non-employment income data matching (NEIDM) program	1	2017–18	Ongoing
Department of Human Services Pay-As-You-Go (PAYG) data matching program	1	2017–18	Ongoing
Department of Human Services information security for the NEIDM and PAYG programs	1	2017–18	Ongoing

Appendix D: FOI statistics

This section contains information regarding:

- Requests for access to documents
- Applications for amendment of personal records
- Charges
- Disclosure log
- Review of FOI decisions
- Complaints about agency FOI actions
- Impact of FOI on agency resources
- Impact of Information Publication Scheme on agency resources

This appendix has been prepared using data collected from Australian Government agencies and ministers subject to the FOI Act, and separately from the Administrative Appeals Tribunal, the Commonwealth Ombudsman and from the OAIC's own records. Australian Government agencies and ministers are required to provide, among other details, information about:

- The number of FOI requests made to them.
- The number of decisions they made granting, partially granting or refusing access, and the number and outcome of applications for internal review.
- The number and outcome of requests to them to amend personal records.
- Charges collected by them.¹

The data given by ministers and agencies for the preparation of this appendix is published on data.gov.au.²

Requests for access to documents

Types of FOI requests

The term 'FOI request' means a request for access to documents made under s 15 of the FOI Act. Applications for amendment or annotation of personal records under s 48 are dealt with separately below.

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

The FOI Act requires that agencies and ministers provide access to documents in response to requests that meet the requirements of s 15 of the FOI Act. The figures in this report do not take account of applications that did not satisfy those requirements.

1 Australian Government ministers and agencies, and Norfolk Island authorities, are required by s 93 of the FOI Act and reg 8 of the Freedom of Information (Prescribed Authorities, Principal Offices and Annual Report) Regulations 2017 to submit statistical returns to the OAIC every quarter and provide a separate annual report on FOI and IPS costs.

2 The data reported in this appendix has been rounded to two decimal places. In the main body of the annual report it has been rounded to a whole number for increased readability.

Numbers of FOI requests received

Table D.1 provides a comparison of the number of FOI requests received in each of the past five reporting years including the percentage increase/decrease from the previous year.

Table D.1 — FOI requests received 2013–14 to 2017–18

2013–14	2014–15	2015–16	2016–17	2017–18
28,463	35,550	37,996	39,519	34,438
14.11%	24.90%	6.88%	4.01%	–12.86%

FOI request numbers declined by 12.86% in 2017–18; the first year to record a decrease in the total number of FOI requests since 2009–10 (the financial year immediately prior to the 2010 FOI Act reforms).

In 2017–18, 28,199 (or 81.88% of all FOI requests) were for documents containing personal information. This is the same proportion as in 2016–17 (81.94%), but a decrease when compared with 2015–16 (86.55%).

Similarly, in 2017–18, 6,239 (or 18.12% of all FOI requests) were for ‘other’ information. This is the same proportion as in 2016–17 (18.06%), but an increase in the proportion when compared with 2015–16 (13.45%).

The decline in total FOI requests in 2017–18 was principally driven by the significant decreases in the number of FOI requests for personal information received by the Department of Home Affairs³ (4,145 fewer) and the Department of Human Services (1,156 fewer) and FOI requests for other information received by the Northern Australian Infrastructure Facility (1,355 fewer).

The general decrease in requests for personal information can be largely attributed to an increased emphasis by agencies on providing access to personal information administratively, outside the FOI Act. The Department of Home Affairs attributes their 23.42% decline in the number of FOI requests for personal information in 2017–18 to the introduction in 2016–17 of an administrative access scheme for certain personal information requests, coming after several years of very large increases in FOI requests for personal information by visa applicants.

The Northern Australian Infrastructure Facility was created on 1 July 2016. In 2016–17, as the result of a public campaign which encouraged members of the public to make FOI requests to the facility, it received 1,367 FOI requests, most of which were made within a two week period in May 2017. In 2017–18, the facility only received 12 FOI requests.

³ As a result of an Administrative Arrangements Order dated 20 December 2017, the Department of Immigration and Border Protection changed its name to the Department of Home Affairs. This report refers to the Department of Home Affairs. The reported data includes data reported by the (former) Department of Immigration and Border Protection during the first six months of 2017–18.

Despite the overall decrease in FOI requests in 2017–18, some agencies reported receiving significantly more FOI requests than in previous years. As a result the National Disability Insurance Agency, Comcare and IP Australia entered the ‘top 20’ agency FOI requests list this year.

Number of FOI requests received by agency/minister

In 2017–18, the Department of Home Affairs, the Department of Human Services and the Department of Veterans’ Affairs together continued to receive the majority of FOI requests (68.75% of the total). Nearly all of those requests (96%) are from individuals seeking access to personal information.

The 20 agencies that received the largest number of requests in 2017–18 are shown in Table 9.2, with a comparison to the number of requests each received in 2016–17.

As noted above, the Department of Home Affairs received significantly fewer FOI requests in 2017–18, and its proportion of the total number of requests received by all Australian Government agencies declined from 46.10% in 2016–17 to 41.17% in 2017–18. This included a 23.42% decrease in requests for personal information (from 17,702 in 2016–17 to 13,557 in 2017–18). However the Department of Home Affairs experienced a 16.77% increase in ‘other’ (non-personal) requests.

The Department of Human Services received 1,219 fewer requests in 2017–18 (down 16.35% from 2016–17). However, the Department of Veterans’ Affairs received more – 3,261

requests, 5.36% more than in 2016–17. The Administrative Appeals Tribunal experienced a 6.78% decrease in requests. The Australian Taxation Office received 1,254 requests, which was 12.57% more than in 2016–17.

As noted above, the total number of requests received by Australian Government agencies decreased by 12.86% in 2017–18. However among the 20 agencies that received the most FOI requests (90.47% of all FOI requests in total), 16 agencies recorded increases in the number of requests received. In particular, the Australian Transaction Reports and Analysis Centre and the National Disability Insurance Agency experienced very significant increases (150.60% and 284.71% respectively). Other agencies to experience significant increases in request numbers include Comcare (68.89%), the Department of Prime Minister and Cabinet (39.39%), the Immigration Assessment Authority (33.33%), the Department of Defence (28.39%), the Department of Jobs and Small Business⁴ (26.59%), the Department of Foreign Affairs and Trade (21.62%) and IP Australia (18.75%).

Because of substantial increases in request numbers, some agencies reported engaging contracted service providers to assist with FOI request processing to meet demand.

Three agencies that appeared in last year’s top 20 agencies experienced decreases in the numbers of FOI requests in 2017–18 and no longer appear in the top 20: the Department of Treasury (a 32.14% decrease), the Department of Social Services (29.94% fewer requests) and the Department of Finance (a 7.55% reduction).

⁴ The Department of Jobs and Small Business was created as a result of an Administrative Arrangements Order dated 20 December 2017. This department incorporates the former Department of Employment with small business policy and programs, and reducing the burden of government regulation into its responsibilities. This appendix refers to the Department of Jobs and Small Business throughout and includes FOI data reported by the (former) Department of Employment during the first six months of 2017–18.

Table D.2 — Agencies by numbers of FOI requests received

AGENCY	2016–17					2017–18					Change in Total
	Rank	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other	Total	% of all FOI requests	
Department of Home Affairs [#]	1	17,702	516	18,218	46.10	1	13,557	620	14,177	41.17	-4,041
Department of Human Services	2	7,164	293	7,457	18.87	2	6,008	230	6,238	18.11	-1,219
Department of Veterans' Affairs	3	3,067	28	3,095	7.83	3	3,199	62	3,261	9.47	166
Administrative Appeals Tribunal	4	1,547	17	1,564	3.96	4	1,445	13	1,458	4.23	-106
Australian Taxation Office	6	599	515	1,114	2.82	5	1,445	13	1,254	3.64	140
Australian Federal Police	7	438	201	639	1.62	6	473	209	682	1.98	43
Immigration Assessment Authority	8	402	0	402	1.02	7	536	0	536	1.56	134
Department of Defence	9	151	233	384	0.97	8	185	308	493	1.43	109
Australian Transaction Reports and Analysis Centre (AUSTRAC)	19	119	47	166	0.42	9	248	168	416	1.21	250

AGENCY	2016-17				2017-18				Change in Total		
	Rank	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other		Total	% of all FOI requests
Department of Health	10	333	337	337	0.85	10	2	374	376	1.09	39
National Disability Insurance Agency*	-	40	45	-	-	11	270	57	327	0.95	242
Department of the Prime Minister and Cabinet	14	1	197	198	0.50	12	5	271	276	0.80	78
Department of Foreign Affairs and Trade	12	76	146	222	0.56	13	97	173	270	0.78	48
Comcare*	-	86	49	-	-	14	155	73	228	0.66	93
Department of Jobs and Small Business#	16	66	173	173	0.44	15	114	105	219	0.64	46
Australian Securities and Investments Commission	15	69	125	194	0.49	16	77	141	218	0.63	24
Commonwealth Ombudsman	17	158	13	171	0.43	17	165	25	190	0.55	19
Attorney-General's Department	13	51	164	215	0.54	18	50	135	185	0.54	-30
Department of Education and Training*	-	16	141	-	-	19	55	127	182	0.53	25

AGENCY	2016-17					2017-18					Change in Total
	Rank	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other	Total	% of all FOI requests	
IP Australia**	-	0	144	-		20	0	171	171	0.50	27
Total top 20	-	31,736^	4,730^	36,466^	92.27	-	27,503	3,654	31,157	90.47	-5,309
Remaining agencies	-	647	2,406	3,053	7.73	-	696	2,585	3,281	9.53	228
Total	-	32,383	7,136	39,519	100.0	-	28,199	6,239	34,438	100.0	-5,081

* Denotes an agency not in the top 20 agencies in 2017-18.

+ In 2017-18, for the purpose of FOI statistical reporting, the OAC created a new agency on the FOI statistics database, 'IP Australia'. This new agency incorporates data from the Designs, Patents, Trade Marks and Plant Breeder's Rights offices which are all within the corporate entity 'IP Australia'. The data given for 2017-18 therefore reflects data which has been reported separately by each of these entities in previous years.

Denotes an agency whose name and/or functions changed as a result of the Administrative Arrangements Order issued on 20 December 2017. The Department of Home Affairs was formerly the Department of Immigration and Border Protection, and the Department of Jobs and Small Business was formerly the Department of Employment.

^ Shows the total for the top 20 agencies in 2016-17 (i.e., includes figures for three agencies not in the top 20 agency list in 2017-18).

FOI requests finalised

Agencies and ministers commenced 2017–18 with a significant number of on hand FOI requests requiring decision (42.89% more than in 2016–17). However the combination of a reduction in the number of requests received during the year (12.86% less) and an increase in requests withdrawn by applicants (32.39% more) resulted in the number of requests on hand at the end of the year being 47.23% less than at the end of 2016–17.

Reasons for the higher number of requests being withdrawn during the year may include:

- Increased use of administrative access schemes to provide access to documents outside the FOI Act.
- Documents are already available on agency disclosure logs.
- Information is published on agency IPS entries and in annual reports.
- Applicants accept verbal assurances that no documents exist within the scope of their request and withdraw.
- Requests being sent to the wrong agency in the first instance which are then withdrawn when sent to the correct agency.⁵

Although there has been an overall decline in the number of FOI requests transferred from one agency or minister to another in 2017–18 (6.92% less), 50.33% of all transfers were made by two agencies: the Administrative Appeals Tribunal and the Immigration Assessment Authority. Both bodies review certain administrative decisions of agencies and ministers. Applicants for review of decisions by these two agencies frequently seek to access documents held by the agency or minister that made the reviewable decision. As a result, these requests are transferred to the relevant agency or minister for processing.

It is worth noting that although only 18.12% of all FOI requests are requests for access to non-personal ('other') information, this category of request was withdrawn 30.77% more often than personal requests in 2017–18.

⁵ Although an agency or minister can transfer a wrongly directed FOI request under s 16(1) of the FOI Act, this can only be done with the agreement of the receiving agency. If the applicant makes the request directly to the agency, it must be processed.

Table D.3 — Overview of FOI requests received and finalised compared to last year

FOI request processing	2016–17	2017–18	% +/-
On hand at the beginning of the year	5,395	6,279	42.89%
Received during the year	39,519	34,438	-12.86%
Requiring decision ⁶	44,914	40,717	-9.34%
Withdrawn	3,844	5,089	32.39%
Transferred	763	641	-15.99%
Decided ⁷	34,029	31,674	-6.92%
Finalised ⁸	38,636	37,404	-3.19%
On hand at the end of the year	6,278	3,313	-47.23%

The percentage of requests granted in full decreased from 55.47% of all requests in 2016–17, to 49.81% in 2017–18. While the number of requests granted in part remained steady at 34%, the number of requests refused (which includes requests refused because the documents sought do not exist or cannot be found and practical refusals, as well as when exemptions have been applied) increased from 9.95% in 2016–17 to 16.19% this year.

A reason for the significant increase in the number of FOI requests being refused in 2017–18, is accounted for by the Northern Australian Infrastructure Facility refusing 1,332 requests under s 24 of the FOI Act (practical refusal). These requests to the agency were received over a two week period in 2016–17, following a public campaign which included a specific online FOI request form. However, it is worth noting that even if the Northern Australian Infrastructure Facility had not made those decisions there would still have been an increase in the proportion of decisions refused in 2017–18 (11.99%).

⁶ Total of requests on hand at the beginning of the year and requests received during the year.

⁷ Covers access granted in full, part or refused.

⁸ The sum of requests withdrawn, transferred and decided.

Table D.4 — Outcomes of FOI requests decided compared with last year

Decision	Personal 2016-17	Other 2016-17	Total 2016-17	%	Personal 2017-18	Other 2017-18	Total 2017-18	%
Granted in full ⁹	18,040	837	18,877	55.47	14,889	889	15,778	49.81
Granted in part ¹⁰	10,180	1,587	11,767	34.58	9,037	1,730	10,767	34.00
Refused	1,899	1,486	3,385	9.95	2,042	3,087	5,129	16.19
Total	30,119	3,910	34,029	100	25,968	5,706	31,674	100

9 The release of all documents within the scope of the request, as interpreted by the agency or minister.

10 A document is granted in part when a part, or parts, of a document have been redacted to remove exempt or conditionally exempt matter.

Table D.5 lists the top 20 agencies by the number of FOI decisions they made. The Attorney-General's Department and the Department of Education and Training are on the list of the top 20 agencies in terms of requests received, but not in the top 20 of decisions made.¹¹ In contrast, the Civil Aviation Safety Authority and the Northern Australian Infrastructure Facility feature in the top 20 by decisions made, but not by requests received.

There are differences in the outcome of FOI requests between those agencies processing the largest number of requests in 2017–18. Thirteen of these agencies refused access to documents at levels higher than the average across all Australian Government agencies (16.19%). As a rule, these agencies process proportionally higher numbers of 'other' (non-personal) FOI requests. Agencies processing higher proportions of FOI requests for personal information have lower refusal rates (see for example, the Department of Home Affairs, the Department of Human Services, the Department of Veterans' Affairs and the Administrative Appeals Tribunal).

11 The Attorney-General's Department finalised 57.30% of all the requests it received in 2017–18 (it received 185 FOI requests and finalised 106). The Department of Education and Training finalised 54.96% (182 requests received, 100 finalised).

Table D.5 — Top 20 agencies by numbers of FOI requests decided

Agency	Granted in full	%	Granted in part	%	Refused	%	Total
Department of Home Affairs	8,464	55.61	5,786	38.02	970	6.37	15,220
Department of Human Services	2,047	46.41	1,746	39.58	618	14.01	4,411
Department of Veterans' Affairs	2,872	97.13	43	1.45	42	1.42	2,957
Northern Australian Infrastructure Facility	1	0.07	7	0.52	1,332	99.40	1,340
Administrative Appeals Tribunal	774	75.73	216	21.14	32	3.13	1,022
Australian Taxation Office	146	16.06	552	60.73	211	23.21	909
Australian Federal Police	38	6.61	346	60.17	191	33.22	575
Immigration Assessment Authority	347	83.41	63	15.14	6	1.44	416
Australian Transaction Reports and Analysis Centre (AUSTRAC)	144	37.31	108	27.98	134	34.72	386
Department of Defence	65	17.71	210	57.22	92	25.07	367
Department of Health	56	21.14	74	31.90	102	43.97	232
National Disability Insurance Agency	68	31.63	121	56.28	26	12.09	215
Comcare	58	29.74	69	35.38	68	34.87	195
Australian Securities and Investments Commission	29	15.51	63	33.69	95	50.80	187

Agency	Granted in full	%	Granted in part	%	Refused	%	Total
Department of Prime Minister and Cabinet	34	18.89	58	32.22	88	48.89	180
Commonwealth Ombudsman	35	21.08	91	54.82	40	24.10	166
IP Australia	27	16.36	135	81.82	3	1.82	165
Department of Foreign Affairs and Trade	16	10.60	76	50.33	59	39.07	151
Department of Jobs and Small Business	58	41.73	51	36.69	30	21.58	139
Civil Aviation Safety Authority	42	31.11	62	45.93	31	22.96	135
Top 20	15,321	52.17	9,877	33.63	4,170	14.20	29,368
Remaining agencies	457	19.82	890	38.6	959	41.59	2,306
Total	15,777	49.81	10,767	33.99	5,129	16.19	31,674

Use of exemptions

Table D.6 shows how Australian Government agencies and ministers claimed exemptions under the FOI Act when processing FOI requests in 2017–18. More than one exemption may be applied in processing an FOI request.

The personal privacy exemption in s 47F of the FOI Act remains the most claimed exemption. It was applied in 42.68% of FOI requests to which an exemption was applied in 2017–18 (less than in 2016–17 when it was claimed in 47.90% of all matters in which an exemption applied). The next most claimed exemptions were s 47E (certain operations of agencies — 19.75%, up from 18.47% in 2016–17), s 37 (documents affecting enforcement of law and protection of public

safety — 9.17%, up from 2016–17 when it was 6.60% of all exemptions applied), s 38 (documents to which secrecy provisions of enactments apply — 6.64% slightly up on 2016–17’s 6.16%) and s 47C (deliberative processes — 5.20% compared with 4.78% in 2016–17).

No agency reported applying s 45A (Parliamentary Budget Office documents) or s 47J (The economy) in 2017–18 (s 45A was applied in three requests in 2016–17). Less reliance was placed on s 45 (material obtained in confidence) in 2017–18 (when it comprised 1.55% of all exemptions applied) than in 2016–17 (2.17%) however s 47B (Commonwealth-State relations) was applied more frequently than in 2016–17 (165 times compared to 122).

Table D.6 — Use of exemptions in FOI decisions

FOI Act reference	Exemption	Personal	Other	Total	% of all exemptions applied
s 33	Documents affecting national security, defence or international relations	545	154	699	4.93
s 34	Cabinet documents	0	68	68	0.48
s 37	Documents affecting enforcement of law and protection of public safety	1,113	186	1,299	9.17
s 38	Documents to which secrecy provisions of enactments apply	752	189	941	6.64
s 42	Documents subject to legal professional privilege	239	123	362	2.56
s 45	Documents containing material obtained in confidence	92	127	219	1.55

FOI Act reference	Exemption	Personal	Other	Total	% of all exemptions applied
s 45A	Parliamentary Budget Office documents	0	0	0	0
s 46	Documents disclosure of which would be contempt of Parliament or contempt of court	14	20	34	0.21
s 47	Documents disclosing trade secrets or commercially valuable information	22	110	132	0.93
s 47A	Electoral rolls and related documents	3	3	6	0.04
s 47B	Commonwealth-State relations	92	73	165	1.16
s 47C	Deliberative processes	401	335	736	5.20
s 47D	Financial or property interests of the Commonwealth	75	21	96	0.68
s 47E	Certain operations of agencies	2,214	583	2,797	19.75
s 47F	Personal privacy	5,114	932	6,045	42.68
s 47G	Business	188	374	562	3.97
s 47H	Research	0	4	4	0.03
s 47J	The economy	0	0	0	0

Use of practical refusal

Section 24AB of the FOI Act sets out that a ‘request consultation process’ must be undertaken if a ‘practical refusal reason’ exists (s 24AA). A practical refusal reason exists if the work involved in processing the FOI request would substantially and unreasonably divert the agency’s resources from its other operations, or the FOI request does not adequately identify the documents sought.

The request consultation process involves the agency sending a written notice to the FOI applicant advising them that the agency intends to refuse the request and providing details of how the FOI applicant can consult the agency. The FOI Act imposes an obligation on the agency to take reasonable steps to help the FOI applicant revise their request so that the practical refusal reason no longer exists.

Table D.7 provides information about how Australian Government agencies and ministers engaged in request consultation processes under s 24AB of the FOI Act in 2017–18 and the outcome of those processes.

Table D.7 — Use of practical refusal

Practical refusal processing step	Personal	Other	Total	% ¹²
Notified in writing of intention to refuse request	1,960	2,168	4,128	–
Request was subsequently refused or withdrawn	1,554	1,924	3,478	84.25
Request was subsequently processed	406	244	650	15.75

Agencies sent 163.28% more notices of an intention to refuse a request in 2017–18 than in 2016–17 (which was a year in which there had been a 15.66% increase over the previous year).

In 2017–18, 84.25% of the FOI requests subject to a notice of intention to refuse were subsequently refused or withdrawn: the proportion was 66% in 2016–17 and 70.3% in 2015–16.

In 2017–18, 20.71% of personal FOI requests for which a notice of an intention to refuse for a practical refusal reason were subsequently processed. This is a decline on 2016–17, when 32.85% of personal FOI requests were subsequently processed. Requests for ‘other’ (non-personal) information were more likely to be refused in 2017–18 following the issuing of a notice of an intention to refuse a request for a practical refusal reason. In 2017–18, only 11.26% of such requests were subsequently processed (in 2016–17, 35.38% were subsequently processed).

However, as noted in previous sections, the Northern Australian Infrastructure Facility refused 1,332 FOI requests in 2017–18 under the practical refusal provisions. This large number of refusals increased both the number of notices issued and the number of requests subsequently refused or withdrawn in 2017–18. However if these decisions are disregarded as anomalous, there was still a 78.22% increase in the number of notices issued in 2017–18 by other agencies (2,791) when compared to 2016–17 (1,566).

Further, the proportion of requests subsequently processed following a notice of intention to refuse being issued has decreased to 15.75% in 2017–18 (from 34% in 2016–17). This may indicate that the assistance agencies gives applicants during the request consultation process is not sufficient to enable applicants to refine their request to remove the practical refusal reason, or that applicants are not willing to refine their request so that they can be processed.

12 Percentage of the total number of notices advising of an intention to refuse a request for a practical refusal reason.

If the data relating to the Northern Australian Infrastructure Facility is disregarded, most of the increase in practical refusal processing in 2017–18 can be attributed to two agencies: the Department of Home Affairs and the Department of Human Services. In the previous reporting period, the Department of Home Affairs and the Department of Human Services respectively issued 590 and 255 notices of an intention to refuse a request. Those figures rose to respectively 1,042 and 987 in 2017–18, a 76.61% increase for the Department of Home Affairs and 287.06% for the Department of Human Services. Together they issued almost half (49.19%) of all practical refusal notices issued in 2017–18.

In 2017–18, 84.86% of all FOI requests determined were processed within the applicable statutory time period: 84.53% of all personal information requests and 86.35% of non-personal requests. This represents a significant improvement in response time from 2016–17 (when 57.62% were decided within time).

Time taken to respond to FOI requests

Agencies and ministers have 30 days within which to make a decision under the FOI Act. The FOI Act allows for the statutory timeframe to be extended in certain circumstances.¹³

If a decision is not made on an FOI request within the statutory timeframe (including any extension period) then s 15AC of the FOI Act provides that a decision refusing access is deemed to have been made. Nonetheless, agencies can and are encouraged to continue to process a request that has been deemed to have been refused.

¹³ An agency may extend the period of time to make a decision by agreement with the applicant (s 15AA), or to undertake consultation with a third party (ss 15(6)–(8)). An agency can also apply to the Information Commissioner for more time to process a request when the request is complex or voluminous (s 15AB), or when access has been deemed to be refused (s 15AC or section 51DA) or deemed affirmed on internal review (s 54D). These extension provisions acknowledge that there are circumstances when it is appropriate for an agency to take more than 30 days to process a request. When an agency has obtained an extension of time to deal with an FOI request, and resolves the request within the extended time period, the request is recorded as having been determined within the statutory time period.

Table D.8 — FOI request response time compared with last year

Response time	Personal 2016-17	Other 2016-17	Total	%	Personal 2017-18	Other 2017-18	Total	%
Within applicable statutory time period	16,343	3,264	19,607	57.62	21,952	4,927	26,879	84.86
Up to 30 days over applicable statutory time period	3,475	325	3,800	11.17	1,018	363	1,381	4.36
31-60 days over applicable statutory time period	2,746	83	2,829	8.31	472	172	644	2.03
61-90 days over applicable statutory time period	2,549	46	2,595	7.63	574	96	670	2.12
More than 90 days over applicable statutory time period	5,006	192	5,198	15.28	1,952	148	2,100	6.63
Total	30,119	3,910	34,029	100.01	25,968	5,706	31,674	100.00

Table D.9 shows those agencies and ministers that in 2017–18 had one or more FOI requests that took more than 90 days beyond the applicable statutory time period to finalise.

While the Department of Home Affairs' compliance with statutory timeframes was 74.88%, a reduction in the number of requests received and improved procedures has resulted in a significant improvement in the department's timeliness in 2017–18 compared to 2016–17 when it finalised only 25.22% within the statutory time period.

Five agencies/ministers took longer than 90 days after the applicable statutory period had expired to process more than 10% of their FOI requests; the Department of Home Affairs, the Prime Minister, the Treasurer, the Minister for Justice, and the Australian Film, Television and Radio School.

A further six agencies/ministers took more than 90 days after expiry of the applicable statutory period to process more than 5% of their FOI requests.

A significant number of the FOI requests finalised more than 90 days after the expiry of the applicable statutory period were requests for access to personal information (1,952 requests, or 92.95% of the total requests finalised more than 90 days after the statutory period had expired). Such lengthy delays in providing access to personal information may have significant impacts on the rights and opportunities of the relevant individuals. The OAIC will work with the relevant agencies and ministers' offices to improve timeliness in 2018–19.

Table D.9 — Response times greater than 90 days after the expiry of the applicable statutory period 2017–18

Agency	Total requests decided	Requests decided more than 90 days after statutory period	% of agency/ minister total
Department of Home Affairs	15,220	1,990	12.48
Australian Federal Police	575	57	9.91
Department of Prime Minister and Cabinet	180	17	9.44
Department of the Treasury	76	7	8.21
Administrative Appeals Tribunal	1,022	4	0.39
Department of Industry, Innovation and Science	52	4	7.69
Australian Securities and Investments Commission	909	4	0.44
Australian Broadcasting Corporation	38	3	7.89
Prime Minister	8	3	37.5
Department of Human Services	4,411	2	0.06
Minister for Justice	2	1	50
Australian Film, Television and Radio School	4	1	25
Treasurer	8	1	12.5
Australian Criminal Intelligence Commission	65	1	1.54

Applications for amendment of personal records

Section 48 of the FOI Act confers a right on a person to apply to an agency or to a minister to amend a document, to which lawful access has been granted, when the document contains personal information about the applicant:

- That is incomplete, incorrect, out of date or misleading; and
- That has been used, is being used, or is available for use by the agency or minister for an administrative purpose.

In 2017–18, 510 amendment applications were received by 14 agencies (none were received by ministers). This is a 53.64% decrease in applications from 2016–17 (when 1,100 applications were received). This decrease is entirely attributable to a significant (56.75%) decrease in the number of amendment applications received by the Department of Home Affairs (1,052 in 2016–17 and 455 in 2017–18).

The Department of Home Affairs advises that the reason for the decrease in applications in 2017–18 is that it has focussed on responding administratively, outside the FOI Act, to applicants seeking to amend their personal records. This includes introducing an online portal to streamline the process for applicants and has resulted in a reduction in the number of amendment applications in 2017–18.

Despite experiencing a large decrease in applications, the Department of Home Affairs still accounted for 89.22% of all amendment applications received during the year (in 2016–17 the Department of Home Affairs accounted for 95.64% of all amendment applications).¹⁴

543 amendment applications were decided in 2017–18. This is 581 less than in 2016–17 when 1,124 applications were decided (a 51.69% decline). This reflects the decrease in the number of applications received during the reporting period.

Table D.10 compares the decision making for amendment applications with last year. In 2017–18, a decision was made to amend or annotate a person's personal record in 72.28% of the decided applications, an increase on the proportion granted in 2016–17 (67.97%). As noted above, overall trends in decision making with respect to amendment applications are largely determined by decisions made by the Department of Home Affairs (which granted 75.46% of applications in 2017–18 and 68.78% in 2016–17).

¹⁴ The other agencies to receive amendment applications in 2017–18, are the Department of Human Services (14), the Department of Jobs and Small Business (13), the Department of Defence (10), Comcare (5), the Department of Veterans' Affairs (3), the Administrative Appeals Tribunal (2), the Australian Taxation Office (2), the Australian Federal Police (1), the Australian Financial Security Authority (1), the Civil Aviation Safety Authority (1), the Department of the Environment and Energy (1), the Fair Work Commission (1) and the National Disability Insurance Agency (1).

Table D.10 — Decisions on amendment applications

Decision	2016–17	%	2017–18	%
Requests granted: amend record	625	55.6	314	57.83
Requests granted: annotate record	136	12.1	70	12.89
Requests granted: amend and annotate record	3	0.3	2	0.37
Requests refused	360	32.0	157	28.91
Total decided	1,124	100	543	100

Time taken to respond to amendment applications

An agency is required to notify an applicant of a decision on their application to amend personal records as soon as practicable, but in any case not later than 30 days after the date the request is received, or a longer period as extended under the FOI Act.

In 2017–18, 85.82% of all amendment applications were decided within the applicable statutory time period. This is a slight decrease in timeliness from 2016–17 (86.55%). The OAIC will work with the relevant agencies and ministers’ offices to improve timeliness in 2018–19.

Charges

Section 29 of the FOI Act provides that an agency or minister may impose charges in respect of FOI requests, except requests for personal information, and sets out the process by which charges are assessed, notified and adjusted.

Table D.11 shows the amounts collected by the 20 agencies that collected the most in charges under the FOI Act in 2017–18. These

top 20 agencies collected 82.55% of all charges collected by Australian Government agencies and ministers.

In 2017–18, agencies notified a total of \$383,531 in charges, with respect to 1,029 FOI requests, but collected only \$115,863 (30.21% of the total notified). This difference is due to agencies exercising their discretion under s 29 of the FOI Act not to impose the whole charge, or applicants withdrawing their FOI request and not paying the notified charge.

Agencies notified and collected significantly less in charges in 2017–18 than in the previous year. In 2016–17, agencies notified a total of \$505,394 in charges with respect to 1,317 requests, and collected \$147,043 (29.09% of the total notified). The percentage decrease in the notification and collection amounts for 2017–18 when compared with 2016–17 are 24.11% and 21.21% respectively.

Table D.11 — Top 20 agencies by charges collected

Agency	Requests received	Requests where charges notified	Total charges notified	Total charges collected
Department of Health	376	138	\$53,925	\$16,693
Department of Education and Training	182	60	\$13,096	\$7,405
Australian Taxation Office	1254	16	\$11,212	\$6,782
Department of Finance	147	22	\$12,869	\$5,284
Department of Defence	493	77	\$28,985	\$4,874
Department of Foreign Affairs and Trade	270	46	\$10,723	\$4,861
Civil Aviation Safety Authority	139	35	\$6,431	\$4,634
IP Australia	171	29	\$11,767	\$4,520
Department of Industry, Innovation and Science	86	10	\$7,179	\$4,401
Department of Human Services	6,238	80	\$18,282	\$4,374
Food Standards Australia New Zealand	4	2	\$5,670	\$4,162
Australian Competition and Consumer Commission	61	35	\$17,941	\$3,970
Australian Communications and Media Authority	13	4	\$3,780	\$3,780
Department of Prime Minister and Cabinet	276	47	\$14,060	\$3,169
Department of Jobs and Small Business	219	33	\$15,419	\$3,122
Australian Securities and Investments Commission	218	19	\$3,888	\$3,077
Australian National University	64	12	\$8,492	\$2,947
Bureau of Meteorology	25	11	\$14,658	\$2,673

Agency	Requests received	Requests where charges notified	Total charges notified	Total charges collected
Department of Communications and the Arts	54	15	\$8,840	\$2,577
Department of Infrastructure, Regional Development and Cities	100	9	\$3,268	\$2,341
Top 20	10,390	700	\$270,485	\$95,646
Remaining agencies	24,048	329	\$113,046	\$20,217
Total	34,438	1029	\$383,531	\$115,863

Disclosure log

All Australian Government agencies and ministers subject to the FOI Act are required to maintain an FOI disclosure log on a website. The disclosure log lists information that has been released to FOI applicants, subject to some exceptions (such as personal or business information). Information about agency and ministerial compliance with disclosure log requirements has been collected since 2012–13.

A total of 108 agencies and ministers reported information about their disclosure log activity in 2017–18. Collectively, they reported 1,104 new entries on disclosure logs during 2017–18; including documents available for download directly from the agency or minister’s website in relation to 624 requests, documents available from another website in relation to 70 requests, and 410 entries in which the documents are available by another means (usually upon request).

The total number of new entries published on disclosure logs in 2017–18 is 15.24% higher than 2016–17, when 958 entries were added. This increase occurs in the context of a 13% decrease in the number of full or partial access grant decisions made in 2017–18. This reflects a greater understanding by agencies of their obligation to publish documents released in response to FOI requests.

However, since 2015–16 the proportion of documents which members of the public can access directly from agency websites has declined from 66.87% to 56.52%. As explained in the FOI Guidelines, publication of documents directly through the disclosure log, rather than providing a description of the documents and how they can be obtained on request from the agency or minister, is consistent with the FOI Act object of facilitating public access to government information.¹⁵ In 2018–19, the OAIC intends revising Part 14 of the FOI Guidelines (Disclosure Log) to emphasise the benefit to the community, and to

15 FOI Guidelines [14.32].

agencies, of making documents released in response to FOI requests readily available on agency websites.

In 2017–18, agencies and ministers reported a total of 37,994 unique visits to disclosure logs and 55,257 page views, which represents an 18.42% increase in unique visits but a 7.50% decrease in total page views reported in 2016–17. This appears to indicate that members of the public are increasingly accessing specific documents, rather than browsing disclosure logs to discover content. This may be the result of the increasing use of search engines to find relevant documents.

Review of FOI decisions

Under the FOI Act, an applicant who is dissatisfied with the decision of a minister or an agency on their initial FOI request has several avenues of review. The applicant can seek internal review with the agency or minister or external merits review by the Information Commissioner (IC review). Information Commissioner decisions under section 55K are reviewable by the Administrative Appeals Tribunal (AAT), then AAT decisions may be appealed on a question of law, to the Federal Court. In addition, an applicant may make a complaint at any time to the Information Commissioner about an agency's actions under the FOI Act, or alternatively has the ability make a complaint to the Commonwealth Ombudsman.

Third parties who have been consulted in the FOI process also have review rights if an agency or minister decides to release documents contrary to their submissions. Consultation requirements apply for state governments (s 26A), commercial organisations (s 27) and private individuals (s 27A).

Internal review

Although there is no requirement to do so, the Information Commissioner recommends that a person apply for internal review by the agency who made the FOI request before applying for IC review.

In 2017–18, 797 applications were made for internal review of FOI decisions: 12.41% more than in 2016–17 (709). This increase is notable because it occurs in the context of a 12.86% (4,081) decline in overall FOI request numbers in 2017–18.

Of the 797 applications for internal review, 463 (58.09%) were for review of decisions made in response to requests for personal information and 334 (41.91%) were for review of decisions on other (non-personal) requests.

Agencies finalised 733 decisions on internal review in 2017–18: 11.23% more than in 2016–17 (659). Of these, 351 (47.89%) affirmed the original decision, 72 (9.82%) set aside the original decision and granted access in full, 217 (29.60%) granted access in part, nine (1.23%) granted access in another form, 14 (1.91%) resulted in lesser access and applicants withdrew 52 applications (7.09%) without concession by the agency. Agencies reduced the charges levied as a result of internal review in 18 cases (2.46%).

There were 10 applications for internal review of decisions on amendment applications, 60% fewer than in 2016–17 (when there were 25 applications). Agencies made nine internal review decisions on amendment applications: in seven (77.78%) the original decision was affirmed and in two (22.22%) it was set aside. In 2016–17, 70.83% of original decisions were affirmed and 29.17% set aside.

Information Commissioner review

Table D.12 provides a breakdown by agency and minister of IC review applications received in 2017–18, where the agency or minister was the subject of more than one IC review. In total, there were 801 applications for IC review (up 27%).

In general, it is expected that the agencies which receive the most FOI requests will have the most IC review applications lodged against their decisions. In 2017–18, 14 of the agencies most appealed against also appear in the list of top 20 agencies in terms of the number of FOI requests received.

However some agencies which do not receive large numbers of FOI requests are the subject of a comparatively large number of IC review applications given their FOI caseload. In 2017–18, these agencies included the Office of the Registrar of Indigenous Corporations (eight IC review applications, 23 FOI requests received – 34.78% of all requests), the Australian Sports Anti-Doping Authority (39 requests, 11 IC review applications – 28.21%), the Australian Broadcasting Corporation (41 requests, 10 IC reviews – 24.39%), the Department of Communications and the Arts (54 requests, 10 IC reviews – 18.52%) and the Department of the Prime Minister and Cabinet (276 requests, 28 IC reviews – 10.15%). The FOI case load of these agencies is characterised by a large proportion of non-personal requests (four of the listed agencies received only non-personal FOI requests in 2017–18).

Table D.12 — Information Commissioner review – top 20 by review applications received

Agency/minister	FOI requests received	Access refusal decisions	Access grant decisions	Total IC reviews	Percentage of FOI requests
Department of Home Affairs	14,177	154	0	154	1.09
Department of Human Services	6,238	119	0	119	1.91
Australian Federal Police	682	52	2	54	7.92
Department of Defence	493	36	3	39	7.91
Australian Taxation Office	1,254	28	0	28	2.23
Department of Prime Minister and Cabinet	276	28	0	28	10.15
Department of Foreign Affairs and Trade	270	26	0	26	9.63
Department of Health	376	19	0	19	5.05
Department of Veterans' Affairs	3,261	18	0	18	0.55
Australian Securities and Investments Commission	218	14	3	17	7.80
Attorney-General's Department	185	17	0	17	9.19
National Disability Insurance Agency	327	15	0	15	4.59
Australian Sports Anti-Doping Authority	39	11	0	11	28.21
Comcare	228	11	0	11	4.82
Commonwealth Ombudsman	190	10	0	10	5.26

Agency/minister	FOI requests received	Access refusal decisions	Access grant decisions	Total IC reviews	Percentage of FOI requests
Department of Communications and the Arts	54	10	0	10	18.52
Australian Broadcasting Corporation	41	10	0	10	24.39
Civil Aviation Safety Authority	139	6	2	8	5.76
Office of the Registrar of Indigenous Corporations	23	8	0	8	34.78
Department of the Environment and Energy	123	7	0	7	5.69
Australian Criminal Intelligence Commission	77	7	0	7	9.09
Subtotal	28,671	606	10	616	2.15
Remaining agencies/ministers	5,767	180	5	185	3.20
Total	34,438	786	15	801	2.33

There was an 18.45% increase in the number of IC reviews finalised by the OAIC in 2017–18 when compared with 2016–17 (515 in 2016–17 and 610 in 2017–18).

In 2017–18, 487 IC reviews were finalised without a formal decision being made under section 55K of the FOI Act (79.84% of all IC reviews finalised during the year). This is a very similar percentage as in 2016–17 (79.81%).

The number of IC review applications declined under section 54W¹⁶ of the FOI Act decreased as a percentage of the total IC reviews finalised in 2017–18. In 2016–17, 141 applications (or 27.38% of the total applications finalised) were declined under section 54W; in 2017–18, this decreased to 26.89% of the total applications finalised (164 in total).

Of the 164 IC review applications declined under section 54W of the FOI Act in 2017–18, 48.17% were declined under section 54W(a)(i) on the basis that the Information Commissioner was satisfied that the IC review application was frivolous, vexatious, misconceived, lacking in substance, or not made in good faith. Of all applications declined under section 54W, 35.98% were declined under section 54W(a)(ii) (failure to cooperate), 6.10% under section 54W(a)(iii) (lost contact) and 9.76% under section 54W(c) (failure to comply).

In 2017–18, the Information Commissioner¹⁷ made 123 decisions under section 55K of the FOI Act, a 20.59% increase on 2016–17 when 102 formal decisions under section 55K were made. Of the 123 decisions, 68 affirmed the decision under review (55.28%), 45 set aside the reviewable decision (36.59%) and 10 decisions were varied (8.13%). In 2016–17, the Information Commissioner affirmed 61.76% of decisions, set aside 22.55% and varied 15.69%.

Of the 68 decisions affirmed by the Information Commissioner, nine (13%) had been revised by the agency or minister under section 55G of the FOI Act during the IC review, giving greater access to the documents sought. In 18% of the decisions set aside and substituted by the Information Commissioner (eight decisions), the agency had withdrawn certain exemption contentions during the course of the IC review.

The percentage of applications received by the OAIC which were out of jurisdiction or invalid increased from 6.60% of all applications in 2016–17, to 13.28% in 2017–18.

¹⁶ Section 54W of the FOI Act contains a number of grounds under which the Information Commissioner may decide not to undertake an IC review, or not to continue to undertake an IC review.

¹⁷ Includes the then acting Information Commissioner.

Table D.13 — Information Commissioner review outcomes compared to 2016–17

Information Commissioner decisions	2016–17	2017–18	% of 2017–18 total
Section 54N – out of jurisdiction or invalid	34	81	13.28
Section 54R – withdrawn	115	131	21.48
Section 54R – withdrawn/conciliated	93	64	10.49
Section 54W(a) – deemed acceptance of PV/appraisal	0	0	0.0
Section 54W(a)(i) – frivolous, vexatious, misconceived, lacking in substance, or not in good faith	66	79	12.95
Section 54W(a)(ii) – failure to cooperate	56	59	9.67
Section 54W(a)(iii) – lost contact	3	10	1.64
Section 54W(b) – refer AAT	15	16	2.62
Section 54W(c) – failure to comply	1	0	0.0
Section 55F – set aside by agreement	7	15	2.46
Section 55F – varied by agreement	5	27	4.43
Section 55F – affirmed by agreement	2	0	0.0
Section 55G – substituted	16	5	0.82
Section 55K – affirmed by IC	63	68	11.15
Section 55K – set aside by IC	23	45	7.38
Section 55K – varied by IC	16	10	1.64
Total	515	610	100.01¹⁸

Administrative Appeals Tribunal review

An application can be made to the Administrative Appeals Tribunal (AAT) for review of the following FOI decisions:

- A decision of the Information Commissioner on an IC review.
- An IC reviewable decision (that is, an original decision or an internal review decision), but only if the Information Commissioner decides, under s 54W(b), that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

¹⁸ This total reflects rounding to two decimal places.

In 2017–18, 30 applications for review of FOI decisions were made to the AAT. This is a 23.08% decrease on the 39 applications made in 2016–17.

Table D.14 provides a breakdown by agency of applications to the AAT in FOI matters in 2017–18. This data has been provided by the AAT.

In 2017–18, three agencies sought review in the AAT of decisions made by the Australian Information Commissioner under s 55K of the FOI Act – the Department of Home Affairs (three applications), the Department of Defence and the Department of Prime Minister and Cabinet (one application each).

Table D.14 — AAT review by agency (respondent)

Respondent	Applications
Department of Human Services	6
Department of Defence	2
Australian Building and Construction	2
Australian Securities and Investments Commission	2
Civil Aviation Safety Authority	2
Commonwealth Ombudsman	2
Australian Federal Police	1
Australian Sports Anti-Doping Authority	1
Commissioner of Taxation	1
Commonwealth Scientific and Industrial Research Organisation	1
Department of Health	1
Department of Home Affairs	1
Department of Social Services	1
Department of Veterans’ Affairs	1
National Offshore Petroleum Safety and Environmental Management Authority	1
Other (appeals by agencies against IC review decisions)	5
Total	30

Thirteen applications remain outstanding with the AAT at the end of 2017–18.

Table D.15 shows the outcome of the 33 FOI reviews finalised by the AAT in 2017–18. This data has been provided by the AAT.

Table D.15 — Outcomes of FOI reviews finalised by the AAT in 2017–18

AAT Outcomes	Number 2016–17	% of total 2016–17	Number 2017–18	% of total 2017–18
Affirmed by consent	0	–	1	3.03
Varied/set aside/remitted by consent	4	11.76	5	15.15
Dismissed by consent	1	2.94	2	6.06
Withdrawn by applicant	13	38.24	10	30.30
Decision affirmed	8	23.53	5	15.15
Decision varied/set aside	7	20.59	7	21.21
Dismissed by AAT – frivolous or vexatious/fail to comply with direction	1	2.94	2	6.06
Dismissed – no application fee paid	0	–	1	3.03
Total	34	100	33	99.99¹⁸

Of the 33 FOI reviews finalised by the AAT, 12 (36.36%) resulted in a published decision in 2017–18.

The AAT affirmed the agency’s decision in five (15.15%) of the 33 AAT reviews, compared with eight (23.53%) in 2016–17.

Of the 33 FOI reviews finalised in 2017–18, 10 were applications made by Australian Government agencies following decisions made by the Information Commissioner under s 55K of the FOI Act. Of these 10 reviews, four applications were set aside (by decision), three applications were withdrawn by the agency and three were set aside by consent.

Federal Court

In 2017–18 the Information Commissioner referred a linked set of two questions of law to the Federal Court under s 55H of the FOI Act. In its application, the Information Commissioner sought to clarify the proper construction of s 55G of the FOI Act during the course of an IC review. On 9 April 2018, the Federal Court (Griffiths J) held that the determination of the referred questions of law did not involve a ‘matter’ within the meaning of Chapter III of the Australian Constitution and therefore dismissed the Information Commissioner’s application (see *Australian Information Commissioner v Elstone Pty Limited* [2018] FCA 463).

¹⁹ This total reflects rounding to two decimal places.

Also during 2017–18 a Full Court considered an appeal against a decision by Tracey J (*Giddings v Australian Information Commissioner* [2017] FCA 667), which remitted an application for IC review to the Information Commissioner to be heard and determined according to law. The Court dismissed the application on 21 December 2017 (see *Giddings v Australian Information Commissioner* [2017] FCAFC 225).

Complaints about agency FOI actions

Complaints to the Information Commissioner

Information about the Information Commissioner’s handling of FOI complaints is provided on page 83.

Complaints to the Commonwealth Ombudsman

Complaints about an agency’s handling of FOI requests are primarily dealt with by the OAIC. The Commonwealth Ombudsman may investigate complaints related to administration of FOI matters when it would be more appropriate or effective, for example, when the FOI complaint is one part of a wider grievance about an agency’s actions.

In 2017–18, the Commonwealth Ombudsman received 49 complaints about FOI matters, 15.52% less than the 58 complaints it received in 2016–17. The Commonwealth Ombudsman transferred 30 complaints to the OAIC under s 6C of the Ombudsman Act 1976 during 2017–18.

Impact of FOI on agency resources

To assess the impact on agency resources of their compliance with the FOI Act, agencies are asked to estimate the hours that staff spent on FOI matters and the non-labour costs directly attributable to FOI, such as legal and specific FOI training costs. Agencies submit these estimates annually. Agency estimates may also include FOI processing work undertaken on behalf of a minister’s office.

Agencies are also asked to report their costs of compliance with the Information Publication Scheme (IPS). To facilitate comparison with the information in previous annual reports, IPS costs are not included in this analysis of the cost of agency compliance with the FOI Act, but are discussed separately below.

The total reported cost attributable to processing FOI requests in 2017–18 was \$52.19 million, a 16.52% increase on the previous year’s total of \$44.79 million. This increase occurred in the context of 12.86% fewer FOI requests being received and a 6.92% decrease in the number of FOI requests determined in 2017–18.

The reason for the increase in overall cost of FOI activity is a 26.99% increase in the average amount of time taken to process each FOI request (from 2.26 days in 2016–17 to 2.87 days 2017–18). More information about staff time spent processing FOI requests is set out below.

Table D.16 sets out the average cost per FOI request determined (granted in full, in part or refused) compared to last year. The average cost per request determined in 2017–18 was \$1,648 (up 25.23% from 2016–17).

Table D.16 — Average cost per request determined 2015–16 to 2017–18

Year	Requests determined	Total cost	Average cost per request determined
2016–17	34,029	\$44,787,154	\$1,316
2017–18	31,674	\$52,186,179	\$1,648

Staff costs

All agencies are asked to supply information about staff resources allocated to FOI.

Table D.17 — Total FOI staffing across all Australian Government agencies compared to last year

Staffing	2016–17	2017–18	+/- %
Total staff hours	670,986	744,350	10.93
Total staff years	335.5	372.18	10.93

Agencies provided estimates of the number of staff hours spent on FOI to enable calculation of salary costs (and 60% related costs) directly attributable to FOI request processing. A summary of staff costs is provided in Table D.18, based on information provided by agencies and ministers and is calculated using the following median base annual salaries from APSC public information:²⁰

- FOI contact officer (officers whose duties included FOI work) \$76,561.²¹
- Other officers involved in processing requests:
 - Senior Executive Service (SES) officers (or equivalent) \$189,353.²²
 - APS Level 6 and Executive Levels (EL) 1–2 \$111,633.²³
 - Australian Public Service (APS) Levels 1–5 \$ 61,970.²⁴
- Minister’s office
 - Minister and advisers \$138,195.²⁵
 - Minister’s support staff \$ 61,970.²⁶

20 As salary levels differ between agencies, median salary levels were used. These are given by the Australian Public Service Commission in its APS Remuneration Report 2017. These median levels are as at 31 December 2017.

21 APS Level 5 base salary median.

22 SES Band 1 base salary median.

23 Executive Level 1 base salary median.

24 APS Level 3 base salary median.

25 Executive Level 2 base salary median.

26 APS Level 3 salary median.

Table D.18 — Estimated staff costs of FOI compared to last year

Type of staff	Staff years 2016–17	Total staff costs 2016–17	Staff years 2017–18	Total staff costs 2017–18	+/- % Total staff costs
FOI contact officers	258.63	30,808,955	277.32	33,971,341	10.26
SES	9.23	2,727,886	13.53	4,097,902	50.22
APS Level 6 and EL 1–2	26.82	4,669,263	42.38	7,569,521	62.11
APS Levels 1–5	38.45	3,874,513	36.97	3,665,451	–5.40
Minister and advisers	1.10	238,518	1.05	231,062	–3.13
Minister’s support staff	1.25	122,827	0.93	92,608	32.63
Total	335.49	42,351,963	372.18	49,627,885	17.18

Total estimated staff costs in 2017–18 were \$49.63 million, 17.18% more than in 2016–17. By contrast, in 2016–17, total estimated staff costs rose by 9.12% over the previous year.

Non-labour costs

Non-labour costs directly attributable to FOI are summarised in Table D.19, including the percentage change from the previous year. The total in 2017–18 was \$2.56 million, a 5.06% increase on the previous year.

The largest increase in non-labour costs in 2017–18 is in relation to the ‘other’ category of expenses and is primarily the result

of the Australian Federal Police and the Department of Home Affairs both reporting that they contracted service providers to assist with FOI processing during 2017–18 (\$153,827 and \$140,152 respectively).

There was also a 32.35% increase in costs associated with FOI training in 2017–18. This increase is the result of many agencies needing to engage new staff to process an increasing FOI workload.

Table D.19 — Identified non-labour costs of FOI

Costs	2016–17	2017–18	% change
General legal advice costs	1,268,462	1,234,631	–2.67
Litigation costs	635,240	426,145	–32.92
Total legal costs	1,903,702	1,660,776	–12.76
General administrative costs	237,932	274,532	15.38
Training	244,765	323,958	32.35
Other	48,792	299,029	512.86
Total	2,435,191	2,558,295	5.06

Average cost per FOI request

The average staff days per request in 2017–18 differed significantly across agencies from 0.019 (Airservices Australia) to 19.21 days (the Department of Defence). The overall average was 2.88 days. The average was 2.26 days in 2016–17.

The average cost per request also differed significantly across agencies from \$12.83 to \$18,095.92. The overall average was \$1,515.37, a 33.71% increase on the previous year’s average of \$1,133.31.

Table D.20 — Agencies with average cost per request greater than \$10,000

Agency	Requests received	Average cost per request
Northern Australian Infrastructure Facility	12	\$18,095.92
Australian Centre for International Agricultural Research	3	\$12,259.32
Department of Defence	493	\$11,756.98

The Department of Defence has a high average cost per request. This is because it has the highest average staff days per request and its overall costs were higher than other agencies because of costs associated with training staff in 2017–18 (\$113,766).

As noted earlier, the Northern Australian Infrastructure Facility finalised 1,340 FOI requests in 2017–18, but received only 12 requests during the year. No other agency experienced such a large difference in request numbers between 2016–17 and 2017–18. If the facility’s total FOI spend is divided by the number of FOI requests it finalised, the average cost per request in 2017–18 would only be \$162.05.

Impact of the Information Publication Scheme on agency resources

Agencies are required to provide information about the costs of meeting their obligations under the IPS, which commenced on 1 May 2011.

The total reported cost attributable to compliance with the IPS in 2017–18 was \$964,637, 126.99% more than in 2017–16 (\$424,966). This increase may be largely attributable to the OAIC conducting a

survey of agencies' IPS compliance. The final report on IPS compliance is expected to be published in the first half of 2018–19.

Staff costs

Table D.21 shows the total reported IPS staffing across Australian Government agencies compared to last year.

Table D.21 — Total IPS staffing

Staffing	2016–17	2017–18	% change
Staff numbers: 75–100% time on IPS matters	9	7	–22.22
Staff numbers: less than 75% time on IPS matters	280	418	49.29
Total staff hours	6705	15,087	125.01
Total staff years	3.35	7.54	125.01

Table D.22 — Estimated staff costs in relation to the IPS for 2017–18

Type of staff ²⁶	Staff years	Salary costs	Related costs (60%)	Total staff costs
IPS contact officers	6.7655	517,973.45	310,784.06	828,757.51
SES	0.089	16,852.42	10,111.45	26,963.87
APS Level 6 and EL 1–2	0.381	42,532.17	25,519.31	68,051.48
APS Levels 1–5	0.308	19,086.76	11,452.06	30,538.82
Total	7.5435	596,444.80	357,866.88	954,311.68

27 IPS contact officers are officers whose usual duties include IPS work. The other rows cover other officers involved in IPS work.

Non-labour costs

Reported IPS non-labour costs for all agencies totalled only \$10,326 in 2017–18 and this was largely the result of one agency (the Australian Radiation Protection and Nuclear Safety Agency) engaging an external auditor to audit their IPS.

Appendix E: Acronyms and abbreviations

Acronym or abbreviation	Expanded term
AAT	Administrative Appeals Tribunal
AHRC	Australian Human Rights Commission
AIC Act	<i>Australian Information Commission Act 2010</i>
ANAO	Australian National Audit Office
APEC	Asia-Pacific Economic Cooperation
APP	Australian Privacy Principle
APPA	Asia Pacific Privacy Authorities
APS	Australian Public Service
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
CALC	Consumer Action Law Centre
CASA	Civil Aviation Safety Authority
CCLCSA	Consumer Credit Law Centre South Australia
CCR	Comprehensive Credit Reporting
CII	Commissioner initiated investigation
CIO	Credit and Investments Ombudsman
CPN	Consumer Privacy Network
DBN	Data Breach Notification
DHS	Department of Human Services
DIBP	Department of Immigration and Border Protection (now known as the Department of Human Services)
DVS	Document Verification Service
EDR	External dispute resolution
EWOQ	Energy + Water Ombudsman Queensland
EWON	Energy & Water Ombudsman NSW
EWOSA	Energy & Water Ombudsman SA

Acronym or abbreviation	Expanded term
EWOV	Energy and Water Ombudsman Victoria
EWOWA	Energy and Water Ombudsman Western Australia
FOS	Financial Ombudsman Service
FOI	Freedom of information
FOI Act	<i>Freedom of Information Act 1982</i>
FTE	Full-time equivalent
GDPR	General Data Protection Regulation
GPEN	Global Privacy Enforcement Network
GST	Goods and Services Tax
HI Services	Healthcare Identifiers Services
IC	Information Commissioner
Information Commissioner	Australian Information Commissioner, within the meaning of the <i>Australian Information Commissioner Act 2010</i> .
IPP	Information Privacy Principle
IPS	Information Publication Scheme
MOU	Memorandum of Understanding
MYEFO	Mid-Year Economic and Fiscal Outlook
My Health Records Act	<i>My Health Records Act 2012</i>
NDB	Notifiable Data Breaches
NMAS	National Mediator Accreditation Standards
NPP	National Privacy Principle
OAIC	Office of the Australian Information Commissioner
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PPN	Privacy Professionals' Network
Privacy Act	<i>Privacy Act 1988</i>
PAW	Privacy Awareness Week
PIA	Privacy Impact Assessment

Acronym or abbreviation	Expanded term
PSM	Public Service Medal
PTO	Public Transport Ombudsman Victoria
SES	Senior Executive Service
SI	Student Identifier
SME	Small and Medium Enterprises
TAP	Talking about performance
TCO	Tolling Customer Ombudsman
TFN	Tax File Number
TIA Act	<i>Telecommunications (Interception and Access) Act 1979</i>
TIO	Telecommunications Industry Ombudsman
TPPs	Territory Privacy Principles
WHS	Workplace Health and Safety

Appendix F: Correction of material errors

Correction of errors in the *Office of the Australian Information Commissioner Annual Report 2016–17*.

Page 18 — Privacy highlights number received

For 2016–17 the number of privacy complaints received should be 2,495, not 2,494.

Page 21 — FOI highlights number received

For 2016–17 the number of IC reviews received should be 633, not 632.

Page 28 — Under the list of CPN members

The year that CPN members joined should be 2016–17 not 2017–18.

Appendix G: Index

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Appendix H

PGPA Rule Reference	Description	Requirement	Part of Report
17AD(g) Letter of transmittal			
17AI	A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with section 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	1
17AD(h) Aids to access			
17AJ(a)	Table of contents.	Mandatory	2
17AJ(b)	Alphabetical index.	Mandatory	194
17AJ(c)	Glossary of abbreviations and acronyms.	Mandatory	190
17AJ(d)	List of requirements.	Mandatory	195
17AJ(e)	Details of contact officer.	Mandatory	Inside cover
17AJ(f)	Entity's website address.	Mandatory	Inside cover
17AJ(g)	Electronic address of report.	Mandatory	Inside cover
17AD(a) Review by accountable authority			
17AD(a)	A review by the accountable authority of the entity.	Mandatory	8–11
17AD(b) Overview of the entity			
17AE(1)(a)(i)	A description of the role and functions of the entity.	Mandatory	6
17AE(1)(a)(ii)	A description of the organisational structure of the entity.	Mandatory	16
17AE(1)(a)(iii)	A description of the outcomes and programmes administered by the entity.	Mandatory	24–89
17AE(1)(a)(iv)	A description of the purposes of the entity as included in corporate plan.	Mandatory	7

PGPA Rule Reference	Description	Requirement	Part of Report
17AE(1)(b)	An outline of the structure of the portfolio of the entity.	Portfolio departments mandatory	6, 16, 92
17AE(2)	Where the outcomes and programs administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change.	If applicable, Mandatory	N/A

17AD(c) Report on the Performance of the entity

Annual performance Statements

17AD(c)(i); 16F	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule.	Mandatory	24–89
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17AD(c)(ii) Report on Financial Performance

17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory	102–139
17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	142–144
17AF(2)	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	If applicable, Mandatory.	102–139, 142–144

PGPA Rule Reference	Description	Requirement	Part of Report
17AD(d) Management and Accountability			
Corporate Governance			
17AG(2)(a)	Information on compliance with section 10 (fraud systems)	Mandatory	100
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	1
17AG(2)(b)(ii)	A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place.	Mandatory	1
17AG(2)(b)(iii)	A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity.	Mandatory	1
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	92
17AG(2)(d) – (e)	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to non compliance with Finance law and action taken to remedy non compliance.	If applicable, Mandatory	N/A
External Scrutiny			
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	N/A
17AG(3)(a)	Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity.	If applicable, Mandatory	N/A

PGPA Rule Reference	Description	Requirement	Part of Report
17AG(3)(b)	Information on any reports on operations of the entity by the Auditor General (other than report under section 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, Mandatory	N/A
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, Mandatory	N/A
Management of Human Resources			
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	95, 97
17AG(4)(b)	Statistics on the entity's APS employees on an ongoing and non ongoing basis; including the following: <ul style="list-style-type: none"> Statistics on staffing classification level; Statistics on full time employees; Statistics on part time employees; Statistics on gender; Statistics on staff location; Statistics on employees who identify as Indigenous. 	Mandatory	95–96
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the <i>Public Service Act 1999</i> .	Mandatory	98
17AG(4)(c)(i)	Information on the number of SES and non SES employees covered by agreements etc identified in paragraph 17AG(4)(c).	Mandatory	96
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	96
17AG(4)(c)(iii)	A description of non salary benefits provided to employees.	Mandatory	97

PGPA Rule Reference	Description	Requirement	Part of Report
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	If applicable, Mandatory	98
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, Mandatory	N/A
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, Mandatory	N/A
17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, Mandatory	N/A
Assets Management			
17AG(5)	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities	If applicable, mandatory	N/A
Purchasing			
17AG(6)	An assessment of entity performance against the Commonwealth Procurement Rules.	Mandatory	99
Consultants			
17AG(7)(a)	A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	99

PGPA Rule Reference	Description	Requirement	Part of Report
17AG(7)(b)	A statement that “During [reporting period], [specified number] new consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]”.	Mandatory	99
17AG(7)(c)	A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged.	Mandatory	99
17AG(7)(d)	A statement that “Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.”	Mandatory	99
<i>Australian National Audit Office Access Clauses</i>			
17AG(8)	If an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor General with access to the contractor’s premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, Mandatory	N/A
<i>Exempt contracts</i>			
17AG(9)	If an entity entered into a contract or there is a standing offer with a value greater than \$10 000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	If applicable, Mandatory	N/A

PGPA Rule Reference	Description	Requirement	Part of Report
Small business			
17AG(10)(a)	A statement that “[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance’s website.”	Mandatory	99
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	99
17AG(10)(c)	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that “[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.”	If applicable, Mandatory	99
Financial Statements			
17AD(e)	Inclusion of the annual financial statements in accordance with subsection 43(4) of the Act.	Mandatory	102–139
17AD(f) Other Mandatory Information			
17AH(1)(a)(i)	If the entity conducted advertising campaigns, a statement that “During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity’s website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance’s website.”	If applicable, Mandatory	100
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, Mandatory	N/A

PGPA Rule Reference	Description	Requirement	Part of Report
17AH(1)(b)	A statement that “Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity’s website].”	If applicable, Mandatory	100
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	101
17AH(1)(d)	Website reference to where the entity’s Information Publication Scheme statement pursuant to Part II of FOI Act can be found.	Mandatory	101
17AH(1)(e)	Correction of material errors in previous annual report	If applicable, mandatory	193
17AH(2)	Information required by other legislation	Mandatory	148–151, 152–189

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