



Our reference: [D2021/019384](#)

Senator the Hon Michaelia Cash

Attorney-General
Minister for Industrial Relations
Deputy Leader of the Government in the Senate
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Response to Statement of Expectations – 2021

Dear Attorney-General

Thank you for your correspondence of 21 October 2021 attaching your Ministerial Statement of Expectations – 2021. I appreciate your acknowledgement of the valuable work done by the Office of the Australian Information Commissioner (OAIC) as the independent national regulator for privacy and freedom of information.

I am pleased to provide you with this Statement of Intent, which sets out how I will meet the expectations you have outlined in relation to the performance of the OAIC’s functions.

Statement of Intent

This statement sets out my intentions as the accountable authority of the Office of the Australian Information Commissioner regarding how I will meet the expectations outlined in the Ministerial Statement of Expectations of 21 October 2021.

Overview

The OAIC is the independent national regulator for privacy and freedom of information. Under the *Australian Information Commissioner Act 2010* (AIC Act), the OAIC’s functions are:

- privacy functions that are conferred by the *Privacy Act 1988* and other legislation including:



- resolving complaints about, investigating, determining, or commencing civil penalty proceedings in relation to, an act or practice that might breach the Privacy Act in response to a complaint or on the Commissioner’s own initiative
- conducting a privacy assessment of whether an entity is maintaining and handling personal information in accordance with the Privacy Act
- involvement in code development
- administering the eligible data breach notification scheme
- directing an agency to give the OAIC a privacy impact assessment about a proposed activity or function
- recognising external dispute resolution schemes to handle particular privacy-related complaints
- providing information and advice on privacy to government, individuals, businesses and agencies
- oversight of the operation of the *Freedom of Information Act 1982* (FOI Act), including reviewing decisions made by agencies and ministers under that Act, resolving FOI complaints and conducting investigations
- government information policy functions, including reporting on matters relating to Australian Government information management policy and practice, and providing advice on FOI and privacy in relation to proposals for legislative change.

The OAIC will exercise our functions and powers in good faith and to the best of our abilities. We will prioritise our regulatory functions and ensure we adopt a contemporary and proportionate approach to our regulatory role in promoting and upholding privacy and freedom of information laws.

The OAIC will use our resources strategically to provide the greatest benefit for the community and drive more efficient processes to ensure we perform our regulatory functions effectively and efficiently. We will strive to develop and sustain a capable, multidisciplinary workforce with a breadth of technical skills to provide guidance and advice, and to take appropriate regulatory action.

Principles of regulator best practice

The OAIC will exercise our functions and powers in accordance with the principles set out in the *Regulator Performance Guide 2021*.

1. Continuous improvement and building trust

The OAIC will:

- promote a regulatory approach that facilitates voluntary compliance with privacy and FOI obligations, including:
 - engaging with regulated entities to provide guidance, promote best practice compliance, and identify and seek to address concerns as they arise
 - engaging with regulated entities which notify the OAIC of a data breach incident to assist them to comply with their relevant reporting and privacy obligations
 - conducting assessments of whether personal information is being maintained and handled by entities in accordance with their obligations
 - promoting privacy impact assessments
- promote public confidence in the regulatory activities of the OAIC by publicising actions taken to address non compliance and dealing with entities that are not complying with their obligations
- ensure transparency and accountability around the use of our regulatory powers including by publishing relevant guidance about the regulatory action taken by the OAIC
- develop people, processes and systems that will allow the OAIC to conduct and finalise regulatory action as promptly as practicable.

2. Risk-based and data-driven

The OAIC will:

- engage in effective risk management and cultivate a positive risk culture through our Risk Management Framework
- use resources strategically to provide the greatest benefit for the community and prioritise strategic regulatory activities
- use resources and capability to contribute to significant government priorities involving personal information handling such as the Cyber Security, Digital Economy and Digital Identity strategies and responses to the COVID-19 pandemic.

3. Stakeholder engagement

The OAIC will ensure open, transparent and consistent engagement with stakeholders including industry, government and the broader community, to support effective and innovative regulatory practices.

The OAIC will:

- seek opportunities to engage and consult genuinely with stakeholders
- be receptive to feedback and diverse stakeholder views
- seek to increase transparency in decision-making processes
- provide up-to-date, clear and accessible guidance and information to assist regulated entities with compliance
- work with Australian Government agencies to improve processes, increase knowledge and understanding of the FOI Act and enhance access to information, consistent with the objects of the Act
- engage with Commonwealth, state, territory and international regulators to actively share learnings and best practices and work cooperatively on inter-jurisdictional regulatory issues with the aim of protecting the personal information of Australians wherever it flows
- work collaboratively with Commonwealth, state, territory and international regulators to take regulatory action to protect Australians' personal information including through cross-border investigations
- work constructively with recognised external dispute resolution schemes, with a view to achieving consistent and efficient regulatory outcomes
- work to increase community trust and confidence in privacy and information access rights, and communicate the OAIC's work effectively to the public.

Innovation and regulatory change

The OAIC will continually monitor our operating environment to ensure that regulatory approaches keep pace with changes in technology, industry practices and community expectations.

We will regularly review and, where necessary, adjust policies, protocols and operating procedures to ensure responsiveness to changes in the social, technological and commercial environment.

Addressing Australian Government policy priorities and objectives

Deregulation Agenda

The OAIC will contribute to the deregulation process by:

- seeking opportunities to remove duplication and streamline processes to improve efficiency and lift productivity
- acting in accordance with regulator best practice in our decision making, policies, processes and communication practices to maximise transparency and minimise compliance costs
- applying the *Regulator Performance Guide* to our regulatory functions to assess our performance and engagement with stakeholders
- incorporating regulator performance reporting into our reporting processes, as required under the *Public Governance, Performance and Accountability Act 2013* and Public Governance, Performance and Accountability Rule 2014 to support greater transparency and accountability of our performance.

Privacy in the online environment

The OAIC will continue to focus on privacy practices that occur online and as a result of new and emerging uses of technology. We will work closely with industry on the development of the Online Privacy Code following the passage of legislation. The OAIC is committed to improving the ability of Australians to manage privacy choices through transparent policies and better practices around consent, and enhancing protections for children and other vulnerable groups.

Consumer Data Right

As co-regulator of the Consumer Data Right, the OAIC will continue to collaborate with the Australian Competition and Consumer Commission in developing compliance and enforcement policies, project planning and risk management activities. We will develop guidance for participants and consumers tailored to the energy sector about the privacy safeguards in the Consumer Data Right system and how the OAIC will exercise our regulatory powers.

Relationship with Minister and portfolio

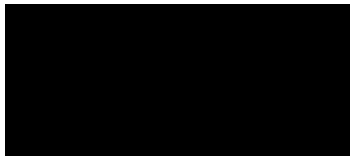
I acknowledge the role the OAIC has in assisting you, as responsible Minister, and the government to respond promptly to privacy law and FOI issues. I undertake to provide you with accurate and timely advice on any significant issues that may arise.

The OAIC will continue to work with the Attorney-General's Department to provide regulatory knowledge and expertise to inform changes to policy and legislation that impact on privacy and FOI matters. OAIC staff will maintain a close working relationship with relevant areas within the department on significant issues relating to privacy and FOI, including staff leading the Privacy Act review.

I appreciate your support for the work of the OAIC as expressed in your Statement of Expectations. I look forward to continuing to work with your office and to support you as responsible Minister on privacy law and FOI matters.

Your Statement of Expectations and my response through this Statement of Intent will be published on the OAIC website.

Yours sincerely



Angelene Falk
Australian Information Commissioner Privacy
Commissioner

21 December 2021