



**Senator the Hon Michaelia Cash**  
Attorney-General  
Minister for Industrial Relations  
Deputy Leader of the Government in the Senate

Reference: MS21-000733

Ms Angelene Falk  
Australian Information Commissioner  
Privacy Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

Dear Ms Falk

I am writing to acknowledge the invaluable work of the Office of the Australian Information Commissioner (OAIC) and provide you with strategic direction consistent with the Government's Deregulation Agenda in the form of the attached Ministerial Statement of Expectations.

As outlined in the *Regulator Performance Guide July 2021*,<sup>1</sup> clear expectations from Government to regulators can help drive better regulator performance by providing an enabling environment that supports the implementation of best practice. Consistent with the Guide, the enclosed Statement of Expectations outlines the principles that I expect the OAIC to observe in performing its functions, noting its operational independence.

I would appreciate your response to this letter in the form of a Statement of Intent by the end of 2021, outlining how the OAIC intends to meet the enclosed expectations.

For greater transparency and accountability, the the attached Statement of Expectations and your responding Statement of Intent should be published and made publicly available on your website. These statements should also be integrated into your performance reporting processes as required under the *Public Governance, Performance and Accountability Act 2013* as part of your 2022-23 corporate planning process and 2021-22 Annual Report.

Yours sincerely

  
Senator the Hon Michaelia Cash

21/9/2021

**Encl.** Statement of Expectations

<sup>1</sup> Available on the Department of the Prime Minister and Cabinet's website.

## OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER

### STATEMENT OF EXPECTATIONS – 2021

Ministerial Statements of Expectations provide greater clarity about government policies and objectives relevant to the regulator in line with its statutory objectives, and the priorities the Minister expects it to observe in conducting its operations. As the responsible Commonwealth Minister for the Office of the Australian Information Commissioner (OAIC), which is established by the *Australian Information Commissioner Act 2010* (AIC Act), this statement sets out my expectations of the OAIC.

#### Overview

The OAIC is the independent national regulator for privacy and freedom of information.

Under the AIC Act, the OAIC's functions are:

- privacy functions that are conferred by the *Privacy Act 1988* (Privacy Act) 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 myself, individuals, businesses and agencies
- oversight of the operation of the *Freedom of Information Act 1982* (FOI Act), reviewing decisions made by agencies and ministers under that Act, resolving FOI complaints and conducting investigations
- government information policy functions, including reporting to myself on matters relating to Australian Government information management policy and practice, including FOI and privacy in relation to proposals for legislative change.

The Government recognises and respects the independence of the Australian Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner appointed under the AIC Act and their responsibility for the regulation of privacy and freedom of information.

I expect the OAIC to exercise its functions and powers in good faith and to the best of its ability. I expect the OAIC to prioritise its regulatory functions, and ensure it is taking a contemporary and proportionate approach to its regulatory role in promoting and upholding Australia's privacy and freedom of information laws. I expect the OAIC to use resources strategically to provide the greatest benefit for the community and drive more efficient processes to ensure they can perform their regulatory functions more effectively, and to continue developing 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**

Under the *Regulator Performance Guide July 2021*, the principles of regulator best practice are:

1. **Continuous improvement and building trust:** regulators adopt a whole-of-system perspective, continuously improving their performance, capability and culture, to build trust and confidence in Australia's regulatory settings.
2. **Risk-based and data-driven:** regulators maintain essential safeguards, using data and digital technology to manage risks proportionately to minimise regulatory burden and to support those they regulate to comply and grow.
3. **Collaboration and engagement:** regulators are transparent and responsive, implementing regulations in a modern and collaborative way.

I expect the OAIC to embed and act in accordance with the Government's principles of regulator best practice when conducting its operations, as well as to strive for continuous improvement against these principles.

In exercising its functions and powers in accordance with these principles, I expect the OAIC to:

#### **1. Continuous improvement and building trust**

- promote a regulatory approach that facilitates voluntary compliance with privacy obligations, including:
  - engaging with regulated entities to provide guidance, promote best practice compliance, and identify and seek to address privacy 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 an assessment 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 privacy breaches and dealing with entities that are not complying with their privacy obligations
- ensure transparency and accountability around the OAIC's use of its regulatory powers including by publishing relevant guidance about the regulatory actions it takes
- 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**

- support effective risk management and cultivate a positive risk culture by maintaining a Risk Management Framework
- use resources strategically to provide the greatest benefit for the community, and prioritise regulatory activities



- use resources and capability to contribute to significant government priorities involving personal information handling such as the Cyber Security and digital identity strategies and responses to the COVID-19 pandemic.

### **3. Stakeholder engagement**

- Open, transparent and consistent engagement with stakeholders including industry, government and the broader community is crucial to maintaining competent and innovative regulatory practices. Consequently, I expect the OAIC to:
  - 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 OAIC's work effectively to the public.

### **Innovation and regulatory change**

I expect the OAIC to continually monitor the environment it operates in to ensure that regulatory approaches keep pace with changes in technology, industry practices and community expectations. I also expect the OAIC to regularly review and, where necessary, adjust policies, protocols and operating procedures, to ensure it can respond to the changing social, technological and commercial context in which it operates.

### **The Government's policy priorities and objectives**

#### ***Deregulation Agenda***

The Deregulation Agenda is a key component of the Government's plan to support economic recovery by making it easier for businesses to grow and create jobs. Ensuring our regulatory settings are the best they can be helps boost productivity and competitiveness and supports well-functioning markets, business investment, job creation and growth.

Under the Deregulation Agenda, the Australian Government is taking a new whole-of-government approach to regulatory policy. This will focus on reducing barriers affecting



Australia's productivity growth and competitiveness. It will also make sure regulations are well-designed, fit-for-purpose and support businesses to grow and create jobs.

I expect the OAIC to contribute to the deregulation process by:

- seeking opportunities to remove duplication and streamline processes in order to improve efficiency and lift productivity
- acting in accordance with regulator best practice in its decision-making, policies, processes and communication practices, in order to maximise transparency and minimise compliance costs
- applying the *Regulator Performance Guide July 2021* to its regulatory functions to assess its performance and engagement with stakeholders
- incorporating regulator performance reporting into the entity's reporting processes, as required under the *Public Governance, Performance and Accountability Act 2013* and *Public Governance, Performance and Accountability Rule 2014*, in order to support greater transparency and accountability of regulator performance.

### ***Privacy in the online environment***

As the importance of the online environment increases for the economy, education and our social connections, I expect the OAIC to focus on privacy practices that occur online and as a result of new and emerging uses of technology. Following the passage of legislation to enable the development of an online privacy code, I expect the OAIC to work closely with industry on a binding code for certain online platforms. This will improve the ability of Australians to manage privacy choices through transparent policies and better practices around consent, and improve protections for children and other vulnerable groups.

### ***Consumer Data Right***

As co-regulator of the Consumer Data Right system, I expect the OAIC to take an integrated approach to developing compliance and enforcement policies, project planning and risk management activities. As the Consumer Data Right becomes more established and expands into more sectors, I expect the OAIC to bolster the guidance it provides to participants and consumers about the privacy safeguards in the system and how the OAIC will exercise its regulatory powers.

### ***Relationship with Minister and portfolio***

The OAIC plays an essential role in ensuring that the Government and I, as the Minister responsible for administering privacy and freedom of information laws, are well placed to respond promptly to privacy and freedom of information matters. The Attorney-General's Department (the department) also supports and advises me by providing advice on policy development and the performance of the portfolio's regulatory systems. The department takes into account the knowledge and expertise of the OAIC when considering changes to policy and legislation that impact on privacy and freedom of information matters.

Accordingly, I expect the OAIC to work collaboratively with the department on significant issues relating to strengthening privacy and freedom of information matters.

As the responsible Minister, I will provide an enabling environment for the OAIC to consistently implement best practice by ensuring you are well informed of the Government's policy direction as specific initiatives and strategies are considered.