



Australian Government

Office of the Australian  
Information Commissioner

Office of the Australian  
Information Commissioner

## Annual report 2021–22

OAIC



Office of the Australian  
Information Commissioner

Annual report 2021–22

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**Australian Government**

**Office of the Australian Information Commissioner**

**The Hon Mark Dreyfus KC MP**

Attorney-General  
Parliament House  
Canberra ACT 2600

Dear Attorney-General

I am pleased to provide the Office of the Australian Information Commissioner's (OAIC) *Annual report 2021–22*.

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

Section 30 of the *Australian Information Commissioner Act 2010* (AIC Act) also requires the Information Commissioner to prepare an annual report on the OAIC's operations, including a report on freedom of information matters (defined in s 31 of the AIC Act) and privacy matters (defined in s 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 line with the Public Governance, Performance and Accountability Rule 2014.

Yours sincerely

**Angelene Falk**

Australian Information Commissioner and Privacy Commissioner  
28 September 2022

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## Acknowledgement of Country

The OAIC acknowledges Traditional Custodians of Country across Australia and recognises their continuing connection to lands, waters and communities. We pay our respect to Aboriginal and Torres Strait Islander cultures and to Elders past and present.

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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 purpose is to promote and uphold privacy and information access rights.

We do this by:

- ensuring proper handling of personal information under the *Privacy Act 1988* and other legislation
- protecting the public's right of access to documents under the *Freedom of Information Act 1982* (FOI Act)
- performing strategic information management functions within the Australian Government under the AIC Act.

Our regulatory activities include:

- conducting investigations
- handling complaints
- reviewing decisions made under the FOI Act
- monitoring agency administration
- providing advice to the public, organisations and Australian Government agencies.

## Outcome and program structure

Our portfolio budget statement describes the OAIC's outcome and program framework.

<b>Outcome 1:</b>	Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of Information Commissioner, freedom of information and privacy functions.
<b>Program 1.1</b>	Complaint handling, compliance and monitoring, and education and promotion.

Our annual performance statement details our activities and key deliverables and measures our performance against our portfolio budget statement targets and the strategic priorities set out in our *Corporate Plan 2021–22*.

Our strategic priorities are to:

- advance online privacy protections for Australians
- influence and uphold privacy and information access rights frameworks
- encourage and support proactive release of government information
- take a contemporary approach to regulation.

# Overview from Australian Information Commissioner and Privacy Commissioner Angelene Falk

In an environment of rapid change, the OAIC continually challenges itself to be as effective as possible in delivering for the Australian people. The agility this requires informs our regulatory approach, which adapts and responds to changes in technology, legislation and community demand to build public trust and confidence in access to government-held information and the protection of personal information.

The appointment of Leo Hardiman PSM KC as Freedom of Information Commissioner was a welcome development to support the OAIC's important freedom of information (FOI) work. In the short time since his appointment, Commissioner Hardiman has already made a significant contribution. I look forward to what we can collectively achieve.

During the year, the work of the OAIC continued to increase in volume and complexity. Collaboration both domestically and internationally has been critical to ensure targeted, informed and proportionate regulation. This collaboration ensures we leverage the expertise of others and amplifies the protection and promotion of access to information and privacy rights.

The release of open by design principles, a collaboration by Australian information commissioners and ombudsmen, underpinned our successful campaign to mark International Access to Information Day in 2021. The principles recognise that making government-held information open by design as a default setting supports our democracy and innovation. Importantly, proactive publication of information supports timely access to information, reduces the need for members of the community to make FOI applications and minimises FOI processing costs for agencies.

A further collaboration is the formation of the Digital Platform Regulators Forum (DP-REG) by the OAIC, the Australian Communications and Media Authority, the Australian Competition and Consumer Commission (ACCC) and the Office of the eSafety Commissioner. The proactive initiatives of DP-REG aim to promote proportionate, cohesive, well-designed



and efficient digital platform regulation that best serves the public interest.

While the accelerating development of the digital world provides great opportunity, it also creates risks to privacy and access to information rights. That's why we have focused our efforts on preventing risks and harms and supporting entities to take a proactive approach to building in access to information and privacy protections by design.

At the same time, the OAIC performs an important complaint and review role for the community. In 2021–22, we received a 3% increase in privacy complaints (2,544) compared to 2020–21; a significant increase of 63% in applications for Information Commissioner review (IC review) of FOI decisions of agencies and ministers (1,995); and a 42% increase in FOI complaints (215).

Each year, the OAIC finalises more IC review applications, but without further resources, we continue to face significant challenges. We finalised 1,392 IC reviews in 2021–22, an increase of 37% compared to 2020–21, which followed a 23% increase the previous year.

In 2021–22, we issued 103 IC reviews and 14 privacy determinations, providing guidance to regulated entities and establishing important precedents.

We also finalised a number of significant privacy Commissioner-initiated investigations (CIIs) focused on the collection of biometric information and the use of high privacy impact facial recognition technologies. Our civil penalty proceedings against US-based Facebook Inc and Facebook Ireland Limited in relation to the *This is Your Digital Life* app continue and we look forward to the hearing of substantive matters.

We also sought to improve privacy and access to information rights protections by providing detailed submissions and policy advice to the Australian Government and others. In 2021–22, we made 18 submissions and 60 bill scrutiny comments across both privacy and FOI. This includes our response to the Attorney-General's Department's *Privacy Act Review: Discussion Paper*. The OAIC's submission to the discussion paper made 113 recommendations that seek to ensure Australia's privacy regime continues to operate effectively and promote innovation and growth.

In 2021–22, we also led a successful Privacy Awareness Week, signing up a record number of supporters. This year's event was built around the theme of privacy as the foundation of trust.

We continue to co-regulate the Consumer Data Right (CDR) with the ACCC. The CDR marked its second year of operation in the banking sector and is being expanded to new sectors, including energy and telecommunications. This is a significant regulatory program for the OAIC. Our focus is ensuring that participants understand and comply with the system's privacy safeguards and that consumers are

empowered to take greater control of their data. This is essential to realising the consumer and competition benefits of the program.

The Notifiable Data Breaches scheme also marked its fourth year of operation in 2022. Since its launch, we have finalised almost 4,000 data breach notifications, working with notifying organisations to support best practice in responding to data breaches.

The OAIC has also undertaken a significant program of corporate change, as we seek to attract committed and expert staff across Australia and continue our hybrid way of working. Our transition to new shared services arrangements during the year has provided the flexibility to recruit, train and support expert staff.

The OAIC continued to strive to make the best use of our resources and take regulatory action that creates the most value for the Australian community. The high level of activity across our functions set out in this annual report is a testament to the skill and commitment of our people, who work every day to promote and protect information access and privacy rights for all Australians.



**Angelene Falk**

Australian Information Commissioner and  
Privacy Commissioner

28 September 2022

## Message from Freedom of Information Commissioner Leo Hardiman PSM KC

I am delighted to have joined the office as the Freedom of Information Commissioner this year, the 40th anniversary of the commencement of the Commonwealth FOI Act.

The statutory framework for FOI at the Commonwealth level has evolved significantly since the enactment of the FOI Act in 1982. Notable changes have included the abolition of conclusive certificates, the introduction of an overriding public interest test to be applied in determining whether a document should be exempt from disclosure and the introduction of an Information Publication Scheme to mandate the publication of a broad range of government information. The overarching governance arrangements for the FOI Act have also changed significantly with the establishment of the OAIC.

The environment within which the FOI Act operates also continues to evolve. The OAIC has continued to see an increase in demand for our FOI regulatory services, including a significant increase in the number of IC reviews and FOI complaints received year on year. This has provided, and continues to provide, the OAIC with both a challenge and an opportunity to examine the way we approach the performance of our FOI functions and to identify and implement changes to maintain and improve that performance.

As the Freedom of Information Commissioner, my focus over the next 12 months will be delivering the OAIC's core FOI regulatory functions, particularly the conduct of IC reviews and the investigation of



complaints. I will also be maintaining a focus on enhancing the information access system through the development of a shared culture within the Australian Government that supports and encourages compliance with the FOI Act as well as the proactive disclosure of information held by agencies.

In that regard, I will be focused on the FOI system as a whole, to identify where systemic improvements that advance the objects of the FOI Act can be made and to work with stakeholders to implement those improvements.

Our continued engagement with and support from stakeholders in the Commonwealth FOI system will be critical to our success.



## Our year at a glance

### Privacy complaints

We received **3% more** privacy complaints

2021-22  
**2,544**

2020-21  
**2,474**

We finalised **2% more** privacy complaints

2021-22  
**2,203**

2020-21  
**2,151**



**90%**

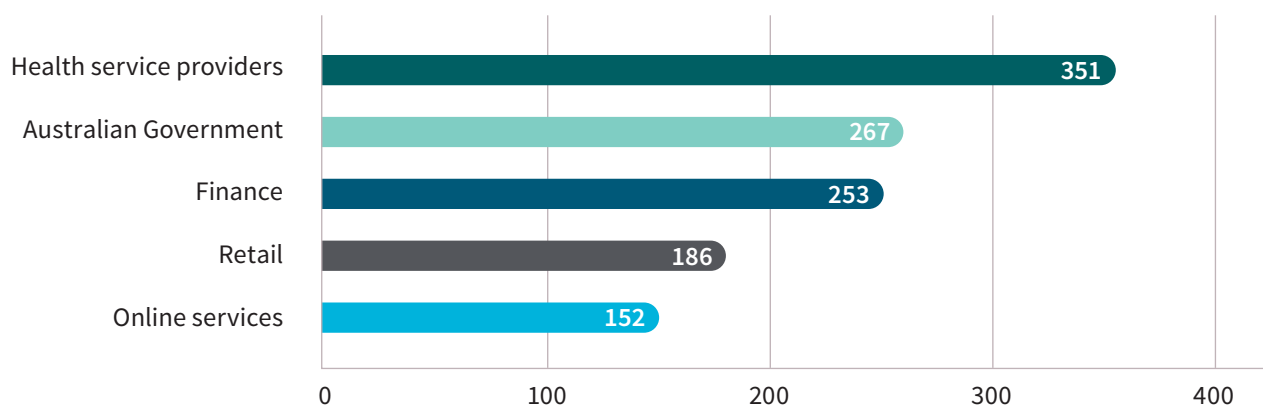
of privacy complaints were finalised within 12 months against a **target of 80%**



The **average time** taken to finalise a privacy complaint was

**6 months**

### Top 5 sectors by privacy complaints received



## Privacy enquiries

We handled  
**10,931**  
privacy enquiries

**↓6%**

decrease from  
2020–21



**7,375**  
phone



**3,554**  
written



**2**  
in-person

## Notifiable Data Breaches scheme

We received **12% fewer** notifications  
under the Notifiable Data Breaches scheme

2021–22

**853**

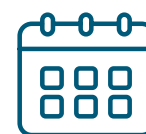
2020–21

**967**



**81%**

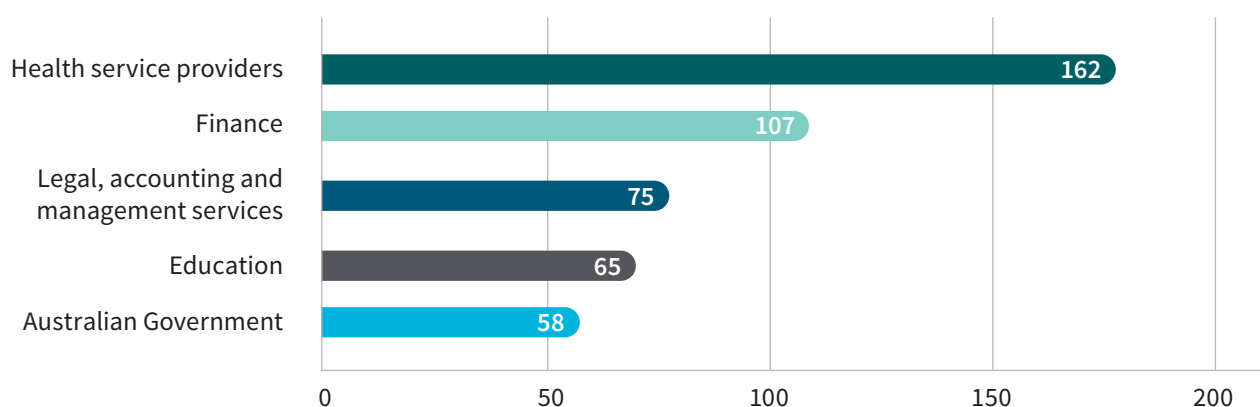
of notifications  
were finalised  
within 60 days  
against a **target**  
**of 80%**



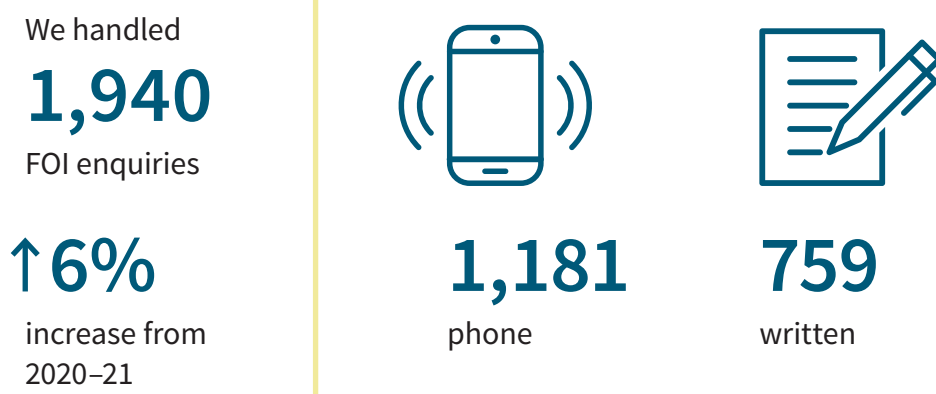
The **average**  
**time** taken  
to finalise a  
data breach  
notification was

**69 days**

## Top 5 sectors by data breach notifications received



## Freedom of information (FOI) enquiries



## FOI complaints

We received **42% more**  
FOI complaints



2021–22

**215**

2020–21

**151**

We finalised **28% more**  
FOI complaints



2021–22

**223**

2020–21

**174**



**74%**

of FOI complaints were  
finalised within 12 months  
against a **target of 80%**



The **average time** taken  
to finalise an FOI  
complaint was

**10.5 months**

## Information Commissioner (IC) reviews

We received **63% more** applications for IC review of FOI decisions

2021-22  
**1,995**

2020-21  
**1,224**

We finalised **37% more** IC reviews

2021-22  
**1,392**

2020-21  
**1,018**



**83%**

of applications for IC reviews were finalised within 12 months against a **target of 80%**



The **average time** taken to finalise an IC review was

**6.3 months**

## Top 5 agencies involved in IC reviews

**1,022**

Department of Home Affairs

**116**

Services Australia

**63**

Department of Health

**54**

National Disability Insurance Agency

**52**

Australian Federal Police

## Our structure

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

Angelene Falk is a statutory officer, appointed by the Governor-General to the roles of Australian Information Commissioner and Privacy Commissioner. She was first appointed to these roles on 16 August 2018 and reappointed for a second 3-year term on 16 August 2021.

Commissioner Falk is our accountable authority with responsibility for strategic oversight, corporate governance and the OAIC's privacy, freedom of information and government information management functions.

She is supported by FOI Commissioner Leo Hardiman PSM KC.

### Angelene Falk

Over the past decade, Commissioner Falk has worked extensively with Australian Government agencies, the private sector and international organisations to address 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.

Commissioner Falk is a member of the National Data Advisory Council, the Executive Committee of the Global Privacy Assembly (GPA) and chair of the GPA's Strategic Direction Sub-Committee.

In 1998, Commissioner Falk was admitted as a legal practitioner to the Supreme Court of New South Wales. She 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.

### Leo Hardiman

Leo Hardiman PSM KC is a statutory officer, appointed as FOI Commissioner by the Governor-General for a 5-year term commencing 19 April 2022.

Commissioner Hardiman has extensive legal and public sector experience. He was previously deputy chief general counsel and national leader of the Office of General Counsel with the Australian Government Solicitor (AGS). He has held a variety of counsel roles with the AGS, Australian Taxation Office and Department of Employment and Workplace Relations.

In 2020, his work was recognised with a Public Service Medal for outstanding public service through the provision of legal services to the Commonwealth.

Commissioner Hardiman holds a Bachelor of Commerce and a Bachelor of Laws. He was admitted to practice as a barrister and solicitor of the Supreme Court of the Australian Capital Territory in 1991 and appointed Queen's Counsel (now King's Counsel) in 2020.





## Our branches

We have 4 branches that undertake work in relation to our privacy, FOI and information management functions.

The **Dispute Resolution branch** is responsible for resolving privacy disputes. This includes:

- handling privacy and FOI enquiries
- handling privacy complaints, which involves resolving privacy complaints at the earliest opportunity by assisting parties to reach settlement through conciliation; investigating more complex complaints and providing outcomes; and supporting the Information Commissioner to make determinations, which may include declarations about entities taking remedial action
- administering the Notifiable Data Breaches scheme to ensure individuals are notified of data breaches so they can act to protect their personal information
- conducting Commissioner-initiated investigations into particular acts and practices, which may result in further regulatory action.

The **Regulation and Strategy branch** is responsible for:

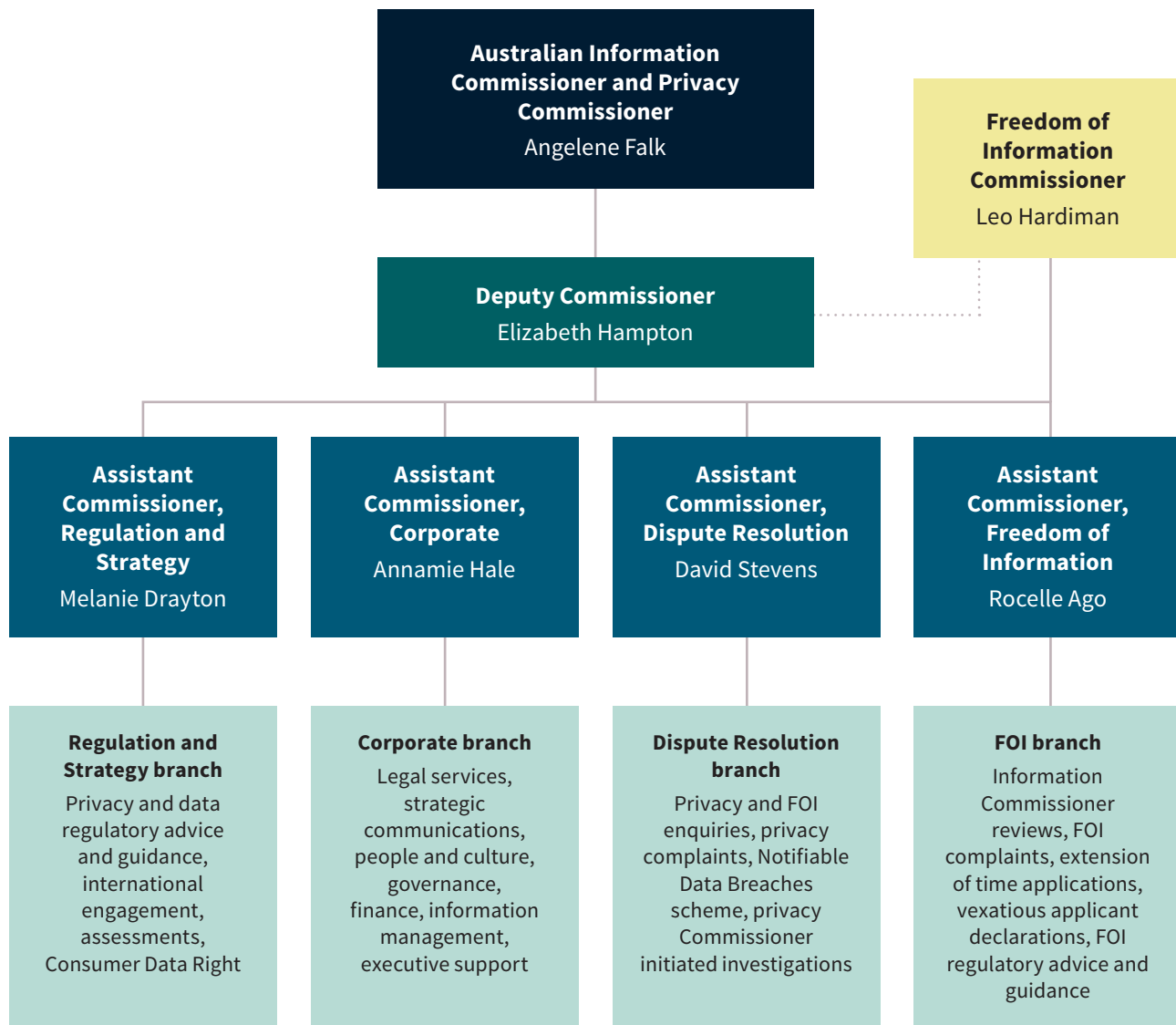
- providing strategic policy advice and guidance to individuals, government and businesses, which includes examining legislation and other proposals that may have an impact on privacy
- managing the program of work under the OAIC's international strategy
- auditing privacy practices in industry and government agencies
- regulating privacy safeguards under the Consumer Data Right system
- monitoring the privacy aspects of the COVIDSafe system.

The **FOI branch** is responsible for:

- undertaking Information Commissioner reviews
- monitoring, investigating and reporting on compliance through FOI complaints and Commissioner-initiated FOI investigations
- deciding on applications for vexatious applicant declarations and extensions of time
- collecting information and statistics from agencies and ministers about FOI matters
- providing advice and guidance on FOI and matters relating to information access.

The **Corporate branch** includes the OAIC's legal services, strategic communications, people and culture, governance, finance, information management and executive support functions. The branch coordinates the OAIC's identification, assessment and mitigation of strategic and operational risks, and manages the security posture of the office, including compliance with the Protective Security Policy Framework.

Figure 1.1: OAIC corporate structure









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# Our annual performance statement

## Introduction

I, Angelene Falk, as the accountable authority of the Office of the Australian Information Commissioner (OAIC), present the 2021–22 annual performance statement of the OAIC, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, this annual performance statement is based on properly maintained records, accurately reflects the performance of the OAIC and complies with ss 39(2) of the PGPA Act.

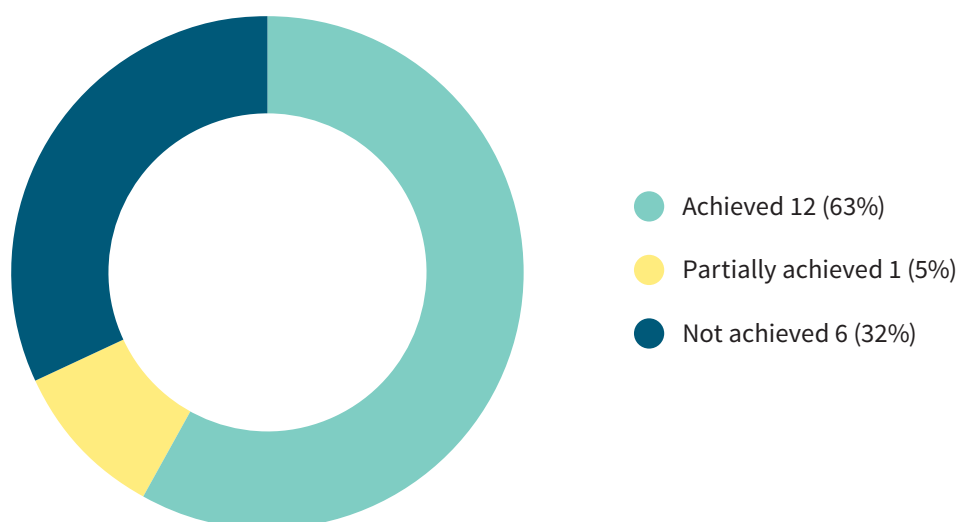
## Overall performance

During this reporting period, the OAIC delivered on our purpose to promote and uphold privacy and information access rights. We measure our success against the performance indicators outlined in our *Corporate Plan 2021–22*, which features 19 indicators grouped under 4 strategic priorities. In 2021–22, we achieved 12 of our 19 indicators. For more information, see Table 2.1: Breakdown of indicators by status.

## Highlights

- We completed 1,392 Information Commissioner reviews (IC reviews) (compared to 1,018 in the previous year), finalising more than half within 120 days.
- We finalised 83% of IC reviews (1,158) within 12 months, which was an improvement on the previous year when we finalised 73% (740).
- We issued 103 decisions under s 55K of the *Freedom of Information Act 1982* (FOI Act), compared to 54 in the previous year.
- We finalised 223 freedom of information (FOI) complaints, an increase of 28% on the previous year.
- We closed 4 Commissioner-initiated investigations (CIIs) and made 3 determinations following CIIs in relation to facial recognition, including a joint privacy investigation with the UK Information Commissioner's Office (ICO).
- We made 14 privacy complaint determinations, exceeding our target of 12. These determinations had significant educational value and set important precedents.
- We closed 2,203 privacy complaints, resolving 90% within 12 months.

**Figure 2.1: OAIC indicators by status**



- We completed our first Consumer Data Right (CDR) privacy assessment of data holders' compliance with Privacy Safeguard 1, and began 2 further assessments.
- We continued to engage closely with the Attorney-General's Department on its ongoing review of the *Privacy Act 1988*, which included making a substantial submission to the *Privacy Act Review: Discussion Paper* in December 2021.
- We provided advice to the Australian Government related to the development of COVID-19 digital vaccination certificates and developed guidance on the handling of vaccination information.
- We led the Australia-wide campaigns for International Access to Information Day (IAID) 2021 and Privacy Awareness Week (PAW) 2022. We enlisted a record 653 government and private sector supporters for PAW.
- Ahead of IAID, we published a statement of principles along with other Australian information access commissioners and ombudsmen to support proactive disclosure of government-held information.
- We engaged proactively with domestic and international regulators through a range of forums, working groups and other collaborative mechanisms. We formed the Digital Platform Regulators Forum (DP-REG) with other independent Australian regulators.
- The Information Commissioner served on the Executive Committee of the Global Privacy Assembly (GPA) and chaired its Strategic Direction Sub-Committee. We co-chaired the GPA Digital Citizen and Consumer Working Group.

## Note about statistics

Statistics in this report are current as of September 2022. Some matters are being assessed and adjustments may be made to related statistics. This may affect statistics for the period 1 July 2021 to 30 June 2022 that are published in future reports. Similarly, statistics may have been adjusted in previous annual reports due to changes to the status or categorisation of individual matters. As a result, statistics in this report from before July 2021 may differ from statistics in previous annual reports.



## Results

Our performance is measured against the 19 indicators in our *Corporate Plan 2021–22*.

**Table 2.1: Breakdown of indicators by status**

Indicator		Measure	Target	Status
1.1	Australia's privacy frameworks are fit for purpose in the digital age	<ol style="list-style-type: none"> <li>1. The OAIC advises government on privacy in the online environment and global interoperability where appropriate</li> <li>2. The Online Privacy Code is developed<sup>†</sup></li> </ol>	<p>Qualitative: The OAIC identifies where online issues and global interoperability are referenced and makes submissions where appropriate</p> <p>Code is registered</p>	Achieved
1.2	The OAIC is a leader in the global privacy community to support the development and enforcement of strong international online privacy protections	<ol style="list-style-type: none"> <li>1. The OAIC has a leadership role in key international policy forums</li> <li>2. The OAIC actively participates in international compliance and enforcement meetings and regulatory activities to which we commit</li> </ol>	<p>Active participation in the Global Privacy Assembly and the Asia Pacific Privacy Authorities forum</p> <p>Active participation in international enforcement and regulatory activities</p>	Achieved
2.1	The OAIC identifies, scrutinises and advances policy and legislative reform proposals	The OAIC influences policy and lawmakers to support privacy and information access rights	Qualitative: The OAIC makes submissions and completes bill scrutiny tasks	Achieved
2.2	Respond to privacy and information access enquiries from the public	Time taken to finalise written enquiries	90% of written enquiries are finalised within 10 working days	Not achieved
2.3	Resolve privacy complaints	Time taken to finalise privacy complaints	80% of privacy complaints are finalised within 12 months*	Achieved
2.4	Ensure timely handling of data breach notifications	<ol style="list-style-type: none"> <li>1. Time taken to resolve Notifiable Data Breaches (NDBs)</li> <li>2. Time taken to resolve My Health Record notifications</li> <li>3. Time taken to resolve National Cancer Screening Register Act (NCSRA) notifications</li> </ol>	<p>80% of NDBs are finalised within 60 days*</p> <p>80% of My Health Record notifications are finalised within 60 days*</p> <p>80% of NCSRA notifications are finalised within 60 days</p>	Partially achieved <sup>‡</sup>
2.5	Conduct CIIIs	Time taken to finalise privacy and FOI CIIIs	80% of CIIIs are finalised within 8 months*	Not achieved <sup>§</sup>

Indicator		Measure	Target	Status
2.6	Provide IC review of FOI decisions made by agencies and ministers	Time taken to finalise IC reviews	80% of IC reviews are completed within 12 months*	Achieved
2.7	Resolve FOI complaints	Time taken to resolve FOI complaints	80% of FOI complaints are finalised within 12 months*	Not achieved
2.8	Improve agencies' processes for managing FOI requests	Agencies accept and implement recommendations made following complaint investigations	90% of recommendations made are accepted	Not achieved
2.9	The OAIC promotes awareness of privacy and access to information	The OAIC leads campaigns such as International Access to Information Day and Privacy Awareness Week	2 major campaigns undertaken each calendar year	Achieved
2.10	The OAIC promotes awareness of CDR privacy rights	Education and awareness materials are developed and promoted	Information on the OAIC website is updated when required by CDR developments	Achieved
2.11	Australians are confident about the system of oversight of privacy and security of the COVIDSafe app	1. Assessment program identifies any privacy risks 2. Effective enquiry, complaint and data breach notification systems	2 assessments conducted and outcomes published Enquiry, complaint and data breach systems available	Achieved
3.1	Agencies publish more government-held information proactively	The OAIC actively promotes proactive publication	The OAIC hosts 2 Information Contact Officers Network (ICON) events and publishes resources	Achieved
3.2	The OAIC identifies and scrutinises policy and legislative reform proposals in relation to Australia's information management framework	The OAIC influences policy and lawmakers in relation to the information management frameworks	Qualitative: The OAIC makes submissions and completes bill scrutiny tasks	Achieved
4.1	The OAIC takes timely and effective regulatory action in relation to strategic privacy and access to information risks	Regulatory Action Committee (RAC) meets regularly and provides clear direction	i. RAC meets 8 times annually ii. RAC decisions take into account OAIC stated priorities	Achieved
4.2	Improved employee engagement	Positive rates against APS Employee Census (Strive, Stay, Say index)	Improvement on previous year (positive variance)	Not achieved
4.3	Increased staff retention	Reduced staff turnover and increased internal mobility	Align with APS Employee Census rates for workforce mobility	Not achieved

Indicator		Measure	Target	Status
4.4	Mature the OAIC’s data capability to understand and address emerging regulatory and enterprise risks	The OAIC leverages data from business systems, complaints and media monitoring	Operational reporting received at each Operations meeting informs regulatory approach	Achieved

\* OAIC Portfolio Budget Statement 2021–22 target.

† Indicator 1.1(2) was not applicable as the legislation to support the Online Privacy Code was not introduced prior to the election in May 2022.

‡ We achieved measures 1 and 3; measure 2 was not achieved.

§ The OAIC did not conduct any FOI CILs during the reporting period.

# Strategic priority 1

## Advance online privacy protections for Australians

The OAIC works to advance online privacy protections for Australians to support the Australian economy. We do this by influencing the development of legislation, applying a contemporary approach to regulation (including through collaboration) and raising awareness of online privacy protection frameworks.

### Indicator 1.1: Australia's privacy frameworks are fit for purpose in the digital age



#### Measure

(1) The OAIC advises government on privacy in the online environment and global interoperability where appropriate



**Target: Qualitative: The OAIC identifies where online issues and global interoperability are referenced and makes submissions where appropriate**

Achieved

During 2021–22, the OAIC provided policy advice to key Australian Government agencies in a timely and informed manner. We promoted best practice in privacy matters and addressed privacy risks in relation to the online environment and global interoperability, including by making 6 submissions that address these issues.

Our policy advice included the review of the Privacy Act, digital health, credit reporting, COVID-19 and the CDR.

### Privacy Act review

The OAIC continued to engage closely with the Attorney-General's Department on its review of the Privacy Act. Since the review began in October 2020, we have provided advice and submissions to support reforms that deliver a regulatory system that protects privacy, holds regulated entities to account and builds public trust to support a strong economy.

In October 2021, a discussion paper was released that set out more detailed proposals and options for reform of the Privacy Act based on feedback received in response to the department's earlier *Privacy Act Review: Issues Paper*.

The OAIC made a substantial submission to the discussion paper in December 2021, which included 113 recommendations that built on the themes and recommendations from our submission to the issues paper. For more information, see OAIC submission to the *Privacy Act Review: Discussion Paper* on page 27.

As the review enters its final stages, the OAIC will continue to engage closely with the department to help support the Australian Government's objective to improve consumer privacy protection and ensure Australia's privacy framework operates effectively for the community, while allowing innovation to thrive in the digital economy.

## OAIC submission to the *Privacy Act Review: Discussion Paper*

In responding to the proposals and options in the Attorney-General's Department's *Privacy Act Review: Discussion Paper*, we drew on our regulatory experience to inform our observations about how these potential reforms would operate in practice. We also outlined the options that are likely to support us to achieve our regulatory objectives over the next decade for the benefit of the Australian community.

Our recommendations seek to strengthen the privacy framework to prevent harms to individuals, including through measures that enhance organisational accountability and benefit the community and the economy overall.

Our recommendations can be grouped into the following key themes:

1. Higher standards of personal information handling are needed to support privacy self-management, so individuals can exercise meaningful choice and control, including:
  - enhancing requirements for the types of information to be included in privacy policies and collection notices
  - strengthening notice and consent requirements, while preserving the use of consent for high privacy risk situations
  - introducing new rights for individuals, including to object and erasure, and a direct right of action.
2. Increased accountability is needed for regulated entities, supported by a positive duty on organisations to handle personal information fairly and reasonably, including:
  - introducing a new positive duty on entities to collect, use and disclose personal information fairly and reasonably in the circumstances
  - introducing express accountability requirements for all entities, including an obligation to take a 'privacy by design' approach
  - placing full or partial prohibitions on certain types of personal information handling activities.
3. A contemporary regulatory framework is needed that provides the right tools to regulate in line with community expectations, including:
  - introducing a simplified civil penalty framework, including a single civil penalty for interferences with privacy
  - empowering the Information Commissioner to issue infringement notices for certain breaches of the Privacy Act
  - providing greater discretion for the Information Commissioner to decline to investigate complaints and focus on high privacy risks.
4. Harmonisation and global interoperability are needed to make sure our laws connect around the world and data is protected wherever it flows, including:
  - introducing a voluntary domestic privacy certification scheme that draws on best practice and works alongside other certification schemes, including the Cross-Border Privacy Rules
  - ensuring the privacy protections in any state or territory laws that address privacy issues are commensurate with those under the Privacy Act
  - establishing a Commonwealth, state and territory working group to harmonise privacy laws, focusing on key issues.



## Digital health

The OAIC has engaged on key digital health reforms, including working to revise the National Health (Privacy) Rules 2021 to ensure they remain appropriate in the evolving digital environment. The rules are a legislative instrument issued by the Information Commissioner under s 135AA of the *National Health Act 1953*. They regulate how Australian Government agencies use, store, disclose and link Medicare Benefits Schedule and Pharmaceutical Benefits Scheme claims information.

## Credit reporting

During the reporting period, we continued our independent review into the operation of the Privacy (Credit Reporting) Code 2014 (CR Code) as required every 4 years. We engaged stakeholders to understand the practical operation of the CR Code and whether it is fit for purpose. We released a consultation paper in December 2021 and received 17 submissions, hosted 3 roundtables and engaged in other stakeholder meetings. The final report is due to be released in 2022.

In 2022, following an application from the CR Code developer, the Information Commissioner approved a variation to the CR Code that addressed amendments to the Privacy Act around access to credit reports and introduced financial hardship information into the credit reporting framework. Based on the commencement date of the amendments to the Privacy Act, the variation resulted in 2 tranches of amendments to the CR Code:

- version 2.2 came into effect on 22 April 2022
- version 2.3 came into effect on 1 July 2022.

The approval of this variation application followed significant engagement with key consumer representatives, members of industry and government and between the Australian Retail Credit Association (as the CR Code developer) and the OAIC.

The introduction of financial hardship reporting is a significant change in Australia's credit reporting system. The amendments to the CR Code are to ensure consistency across industry in the collection, use and disclosure of financial hardship information and the privacy protections afforded to each individual's information.

## COVID-19

The OAIC continued to ensure personal information provided to support the ongoing public health response to the COVID-19 pandemic is protected and that privacy is at the forefront of new initiatives.

We provided targeted advice to government stakeholders in relation to:

- requirements to provide personal information for contact tracing purposes
- the development of COVID-19 digital vaccination certificates
- the collection, use and disclosure of COVID-19 vaccination status information across government and industry
- the privacy implications of other public health measures that involve the collection of personal and sensitive information, such as rapid antigen and polymerase chain reaction (PCR) test results.

## Consumer Data Right

The OAIC provided privacy advice to the Australian Government on reforms to the *Competition and Consumer Act 2010* and the Competition and Consumer (Consumer Data Right) Rules 2020 (CDR Rules) relating to the expansion of the CDR system.

Advice we provided included:

- the *Report on the draft Consumer Data Right (Telecommunications Sector) Designation*
- a submission on the *Consumer Data Right Open Finance Sectoral Assessment (Non-bank lending)*
- a submission to the statutory review of the CDR
- comments on 18 decision proposals proposing changes to the *CX Guidelines* and queries from the Data Standards Body.



### Case study 1.1.1: Digital Platform Regulators Forum

In March 2022, the OAIC, Australian Communications and Media Authority, Australian Competition and Consumer Commission (ACCC) and Office of the eSafety Commissioner formed DP-REG.

DP-REG is an initiative of Australian independent regulators to share information about and collaborate on cross-cutting issues and activities in relation to regulating digital platforms. This includes considering the intersection between competition, consumer protection, privacy, online safety and data. DP-REG gives members an opportunity to promote proportionate, cohesive, well-designed and efficient digital platform regulation.

The OAIC will continue to work closely with other regulators via the forum to advance online privacy protections for Australians, protect individuals from harm in the online environment and achieve the best outcomes in the public interest.



#### Measure

(2) Online Privacy Code is developed



#### Target: Code is registered

Not applicable

Indicator 1.1(2) was not applicable as the legislation to support the Online Privacy Code was not introduced before the election in May 2022.

The OAIC regularly liaised with the Attorney-General's Department throughout the development of the legislation to amend the Privacy Act. The amendments would introduce new powers that would require the development of an Online Privacy Code for social media and other online platforms.

We established a dedicated project team and prepared to work with stakeholders to develop the Online Privacy Code once the Privacy Act was amended.

Indicator 1.2: The OAIC is a leader in the global privacy community to support the development and enforcement of strong international online privacy protections



#### Measure

(1) The OAIC has a leadership role in key international policy forums



#### Target: Active participation in the Global Privacy Assembly and the Asia Pacific Privacy Authorities forum

Achieved

The OAIC's active engagement with global and regional forums assists Australia to be a leader in the privacy community and influence the global debate on privacy issues.

Through these forums, we work towards the interoperability of Australia's privacy framework with other data protection frameworks around the world. We also exchange information to make the best use of our resources while ensuring consistent regulatory oversight.

During 2021–22, the OAIC took a leadership role in a range of key international policy forums that promote and support international cooperation and interoperability of global privacy and data protection laws. For more information, see International privacy forums on page 30.

**Table 1.2.1: International meetings**

Global Privacy Assembly committee name	Meetings attended 2021–22
Executive Committee	5
Strategic Direction Sub-Committee	6
Ethics and Data Protection in Artificial Intelligence Working Group	1
International Enforcement Cooperation Working Group	3
Digital Citizens and Consumers Working Group	4
Policy Strategy Working Group Workstream 1: Global Standards and Frameworks	1
International Enforcement Cooperation Working Group – Ethics and Data Protection in AI Working Group Facial Recognition Technology subgroup	3
<b>Total</b>	<b>23</b>

## International privacy forums

### Global Privacy Assembly

The OAIC is a member of the GPA. Commissioner Falk is a member of the Executive Committee and chair of the Strategic Direction Sub-Committee. In these roles, she provides strategic direction to the GPA's membership of over 130 privacy and data protection authorities from across the globe. The OAIC also co-chairs the Digital Citizen and Consumer Working Group, which explores cross-regulatory intersections and collaboration.

We participate in several GPA working groups, including the International Enforcement Working Group (IEWG) and the Ethics and Data Protection in Artificial Intelligence Working Group. The OAIC attended the GPA annual conference virtually in October 2021.

During 2021–22, we contributed to the work of the Facial Recognition Technology subgroup on developing agreed principles and expectations for the appropriate use of personal information in facial recognition technology.

### Asia Pacific Privacy Authorities

The Asia Pacific Privacy Authorities (APPA) is the main forum for the region's privacy authorities to form partnerships and exchange ideas about privacy regulation, new technologies and the management of privacy enquiries and complaints. The OAIC is a founding member of APPA.

We attended 2 APPA forums held virtually in the reporting period. At the 56th APPA forum, hosted by the Office of the Information and Privacy Commissioner for British Columbia, we provided jurisdictional updates on facial recognition technology and the OAIC's investigations. Commissioner Falk chaired a panel discussion on privacy guidance and enforcement. At the 57th APPA forum, hosted by the Office of the Privacy Commissioner for Personal Data, Hong Kong, we provided a jurisdictional update on the Digital Platform Regulators Forum. Commissioner Falk participated in a panel discussion on privacy issues arising from emerging technologies.

### Global Privacy Enforcement Network

The OAIC is part of the Global Privacy Enforcement Network (GPEN), which is designed to facilitate cross-border cooperation in the enforcement of privacy laws. GPEN builds on the Organisation for Economic Co-operation and Development’s Recommendation on Cross-border Cooperation in the Enforcement of Laws Protecting Privacy. This recognises the need for privacy enforcement authorities to increase cooperation on cross-border privacy matters. The OAIC joined regular GPEN calls to discuss topical issues.



**Measure**

(2) The OAIC actively participates in international compliance and enforcement meetings and enforcement activities to which we commit



**Target: Active participation in international enforcement and regulatory activities**

Achieved

The OAIC participated in a range of networks and arrangements that promote and support international cooperation in investigating and enforcement of privacy and data protection laws. As part of our membership of the GPA, we participate in 5 working groups, including the IEWG.

In October 2021, the OAIC joined 5 global regulators in publishing guiding privacy principles and good practice lessons for video teleconferencing companies. This came after the OAIC and the 5 regulators published an open letter to video teleconferencing providers via the IEWG in 2020–21. It set out clear expectations for these companies, given the increased privacy risks associated with the sharp uptake of these services during the COVID-19 pandemic.

An IEWG subgroup was established in 2021–22 to explore privacy and data security issues associated with the scraping of personal information from publicly accessible websites. The OAIC is leading this initiative, which is focused on clarifying companies’ obligations to protect against scraping of publicly accessible personal information from their sites.

We also participated in the Global Cross Border Enforcement Cooperation Arrangement, Asia-Pacific Economic Cooperation Cross-border Privacy Enforcement Arrangement and GPEN.

The OAIC exchanges information related to investigations and provides mutual assistance under memorandums of understanding with the UK ICO, Data Protection Commission of Ireland and the Personal Data Protection Commission Singapore.

## Strategic priority 2

### Influence and uphold privacy and information access rights frameworks

The OAIC regulates the collection and management of personal information by organisations and Australian Government agencies to ensure it is handled responsibly. We promote access to government-held information through the regulation of the FOI Act and our role in information policy. The OAIC promotes and upholds these rights and regulatory frameworks through the delivery of our core functions. This includes influencing domestic legislative and regulatory developments to protect and advance privacy and access to information for the community.

#### Indicator 2.1: The OAIC identifies, scrutinises and advances policy and legislative reform proposals



##### Measure

The OAIC influences policy and lawmakers to support privacy and information access rights



##### Target: Qualitative: The OAIC makes submissions and completes bill scrutiny tasks

Achieved

During 2021–22, the OAIC made 17 submissions and provided 53 bill scrutiny comments in relation to privacy law. Topics included digital identity, the National Data Security Action Plan, the ransomware notification scheme, reform of Australia's electronic surveillance framework, critical infrastructure protection, anti-trolling, the digital platforms services inquiry, biosecurity risk management, the National Disability Insurance Scheme, aged care and the National Occupational Respiratory Disease Registry.

We continued to engage closely with the Attorney-General's Department on its ongoing review of the Privacy Act. In December 2021, we made a substantial submission with 113 recommendations to the department's *Privacy Act Review: Discussion Paper*. For more information, see OAIC submission to the *Privacy Act Review: Discussion Paper* on page 27.

The OAIC made 7 submissions and provided privacy advice to the Australian Government regarding the CDR, including to the statutory review and on the expansion of the system to the energy, telecommunications and non-bank lending sectors.

For information on our FOI submissions and bill scrutiny work, see indicator 3.2 on page 56.

#### Privacy law submissions

The OAIC made 17 submissions in 2021–22 that covered a wide range of topics. These were to:

- the Digital Transformation Agency's consultation on the *Digital Identity Legislation Position Paper*
- the Attorney-General's Department's consultation paper on the National Register of Enduring Powers of Attorney
- the Digital Transformation Agency on the Trusted Digital Identity Bill 2021 exposure draft consultation
- the Attorney-General's Department in relation to its *Privacy Act Review: Discussion Paper*
- the Department of Home Affairs in relation to its *Reform of Australia's electronic surveillance framework Discussion Paper*
- the Attorney-General's Department in relation to an exposure draft of the Social Media (Anti-Trolling) Bill 2021
- the Senate Legal and Constitutional Affairs Legislation Committee in relation to the Social Media (Anti-Trolling) Bill 2022

- the ACCC's *Digital Platform Services Inquiry Discussion Paper for Interim Report No 5*
- the Parliamentary Joint Committee on Intelligence and Security's review of the Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022
- the Department of Home Affairs in relation to its *National Data Security Action Plan Discussion Paper*
- The Treasury in relation to its CDR Rules Amendments (Version 3) consultation
- The Treasury in relation to its CDR Energy Rules (Version 4 Rules) consultation
- The Treasury in relation to its CDR strategic assessment consultation
- The Treasury in relation to its *Consumer Data Right Sectoral Assessment: Telecommunications*
- the Minister for Superannuation, Financial Services and the Digital Economy about the Consumer Data Right (Telecommunications Sector) Designation 2021 exposure draft
- The Treasury in relation to its *Consumer Data Right Open Finance Sectoral Assessment: Non-bank lending*
- The Treasury in relation to its *Statutory Review of the Consumer Data Right: Issues paper*.

## Indicator 2.2: Respond to privacy and information access enquiries from the public



### Measure

Time taken to finalise written enquiries



### Target: 90% of written enquiries are finalised within 10 working days

Not achieved

The OAIC provides a free public information service for privacy and FOI issues.

In 2021–22, we finalised 73% of written enquiries within 10 working days against our target of 90%. This is an improvement from the previous financial year when we finalised 65% of written enquiries within our target.

Our ability to meet this target in 2021–22 was affected by staff turnover and an increase in the complexity of enquiries, particularly those related to emerging areas arising from the COVID-19 pandemic. Of the 10,931 privacy enquiries we received (by phone and in writing), almost 10% (1,011) related to the pandemic. Emerging areas relating to the pandemic included queries around vaccination information and vaccination certificates, contact tracing and QR codes.

Under our memorandum of understanding (MOU) with the Australian Capital Territory (ACT) Government, we continued to provide privacy services to ACT public sector agencies. This included responding to enquiries from the public about the *Information Privacy Act 2014* (ACT) and the Territory Privacy Principles (TPPs). For more information, see Appendix D: Memorandums of understanding.

## Privacy enquiries by issue

In 2021–22, we saw a 6% decrease in privacy enquiries compared to the previous period. The OAIC answered 7,375 phone enquiries and 3,554 written enquiries. The majority of phone enquiries about privacy matters (57%) concerned the operation of the Australian Privacy Principles (APPs). The most frequently discussed was collection of personal information (APP 3), followed by access to personal information (APP 12) and the use or disclosure of personal information (APP 6).

**Table 2.2.1: Phone enquiries related to the APPs**

Issue	Number of calls	% of phone enquiries
APP 3 – Collection	944	13
APP 12 – Access to personal information	687	9
APP 6 – Use and disclosure	676	9
Privacy generally	641	9
Exemptions	468	6
APP 11 – Security of personal information	371	5
APP 5 – Notification of collection	235	3
APP 13 – Correction	52	1
APP 7 – Direct marketing	51	1
APP 10 – Quality of personal information	46	1
APP 1 – Open and transparent management	26	—*
APP 8 – Cross-border disclosure	20	—*
APP 2 – Anonymity and pseudonymity	4	—*
APP 4 – Unsolicited personal information	4	—*
APP 9 – Government identifiers	2	—*

### Notes

More than one issue may be handled in an enquiry.

This table includes enquiries related to the COVID-19 pandemic where the APPs apply.

\* Denotes a percentage less than 1% when rounded to the nearest whole number.



We also handled enquiries about other privacy issues, reflecting the broad range of matters the OAIC regulates. Table 2.2.2 categorises these enquiries.

**Table 2.2.2: Phone enquiries on other privacy matters**

Issue	Number of calls
OAIC's jurisdiction	516
Credit reporting	244
NDB scheme	185
COVID-19 (non-APP issues)	146
Voluntary data breach notification	70
Healthcare Identifier	15
My Health Record	15
Spent conviction	13
TPP	12
Tax file number	10

**Note**

More than one issue may be handled in an enquiry.



## Privacy enquiries case studies

### Case study 2.2.1: Access to medical records

We received an enquiry from a parent seeking access to their baby's medical records. The parent noted that a private health service provider had refused them access without giving them an explanation. We gave the parent information about APP 12, including that if they were refused access, it had to be under one of the grounds listed for APP 12. We advised that if they were unable to resolve the matter, they could lodge a privacy complaint with the OAIC.

### Case study 2.2.2: Enquiry about collection

A person alleged that as part of a recruitment process a prospective employer requested personal information that they considered excessive. We provided information about the application of APP 3 – organisations may collect personal information where reasonably necessary for their functions or activities and that the collection must be by lawful and fair means. We advised that in some situations, organisations may be permitted or required to collect information under other laws. We suggested the person make their concerns known directly to the prospective employer and if they were unable to resolve the issue, they could lodge a complaint with the OAIC.

### Case study 2.2.3: Enquiry about credit reporting

A person contacted us because they were refused credit and wanted to know why. We explained the credit reporting system, provided the contact details for credit reporting bodies and suggested they obtain a copy of their credit report to see if a default had been listed. We also discussed the relevant accuracy requirements under Part IIIA of the Privacy Act and advised of our complaints process.

### Case study 2.2.4: Enquiry about an FOI request

A person contacted the OAIC about an FOI request they had submitted to an Australian Government agency. They advised that it had been more than 30 days since they submitted their request and they had not received a response. We informed the individual that this may be considered a 'deemed refusal' under the FOI Act and discussed the IC review process.

## FOI enquiries

In 2021–22, we saw a 6% increase in FOI enquiries compared to the previous period. The OAIC answered 1,181 phone enquiries and responded to 759 written enquiries about FOI. Most enquiries were about the OAIC's jurisdiction, followed by general processes, including how to make an FOI request or complaint or seek review of an FOI decision.

**Table 2.2.3: FOI enquiries by issue**

Issue	Number of enquiries
OAIC's jurisdiction	828
General processes	731
Australian Government agency FOI statistics	182
Processing by agencies	139
Access to personal information	91
Access to general information	19
Vexation application	4
Information Publication Scheme	3
Amendment and annotation	3

#### Note

More than one issue may be handled in an enquiry.

## Indicator 2.3: Resolve privacy complaints



### Measure

Time taken to finalise privacy complaints



**Target: 80% of privacy complaints are finalised within 12 months**

Achieved

Under s 36 of the Privacy Act, individuals may make a complaint to the Information Commissioner about an act or practice that may be an interference with their privacy. An interference with privacy may relate to the APPs or to the credit reporting provisions of the Privacy Act.

The APPs deal with the management, collection, use or disclosure, quality, security, access and correction of personal information held by an Australian Government agency or organisation covered by the Privacy Act.

In 2021–22, the OAIC:

- received 2,544 privacy complaints, a 3% increase compared to 2020–21
- closed 2,203 privacy complaints, a 2% increase on the previous year<sup>1</sup>
- finalised 90% of privacy complaints within 12 months of receipt (a decrease from 94% in 2020–21), with the average time taken to close a privacy complaint being 6 months
- closed 91% of complaints through early resolution and conciliation.

<sup>1</sup> We resolved an additional 1,571 matters through a representative complaint. As these complaints were resolved through an alternative process, they have not been included in the calculations against this performance measure.

We continued to improve processes to make complaints handling more efficient. We completed 2 short-term projects to help manage the volume of complaints.

- **Conciliation project** – We engaged 2 external conciliators and additional conciliation support staff to increase the number of conciliation conferences we held. The project ran from mid-April to the end of June 2022. We scheduled 45 conciliations for the external conciliators. Four per cent of complaints were resolved before conciliation; 60% of scheduled matters proceeded to conciliation and 58% of these were resolved and closed.
- **Service provider referral project** – We referred a batch of preliminary inquiries aimed at establishing whether respondents were in jurisdiction (small business operator inquiries) to external lawyers. We produced a manual with templates for this purpose and provided training. The law firm made inquiries of 118 respondents during this project.

### Privacy complaints by issue

The majority of privacy complaints we received were about the handling of personal information under the APPs. The most common issues raised were:

- security of personal information (28%)
- use or disclosure of personal information (25%)
- collection of personal information (16%).

### Privacy complaints by sector

The largest number of privacy complaints were received against entities in 3 sectors: health service providers, Australian Government and finance (including superannuation). Health services providers have overtaken finance and the Australian Government as the most complained about sector.

**Table 2.3.1: Top 10 sectors by privacy complaints received**

Sector	Number of complaints
Health service providers	351
Australian Government	267
Finance (including superannuation)	253
Retail	186
Online services	152
Credit reporting bodies	133
Travel and hospitality	97
Personal services (includes employment, childcare and veterinarians)	86
Telecommunications	85
Real estate agents	78

## External dispute resolution schemes

The Information Commissioner can recognise an external dispute resolution (EDR) scheme to handle certain privacy-related complaints (s 35A of the Privacy Act). The EDR schemes we recognise are:

- Australian Financial Complaints Authority
- Energy & Water Ombudsman NSW
- Energy & Water Ombudsman SA
- Energy and Water Ombudsman Victoria
- Energy & Water Ombudsman Queensland
- Energy and Water Ombudsman Western Australia
- Public Transport Ombudsman (Victoria)
- Telecommunications Industry Ombudsman
- Tolling Customer Ombudsman
- ACT Civil & Administrative Tribunal.

In 2020–21, the OAIC reached an agreement with EDR schemes to transfer privacy complaints (under s 50 of the Privacy Act) to them when they could more appropriately deal with the complaint. The first referral was made in 2021–22 and a total of 34 were made in the reporting period.

## Resolving privacy complaints

The OAIC's complaints handling team (comprising the early resolution, conciliations, investigations and determinations areas) deal mostly with APP and credit reporting complaints. They also handle complaints about spent convictions, My Health Records, tax file numbers, TPPs, data matching, Healthcare Identifiers and student identifiers.

They initially assess privacy complaints and attempt to resolve them. Under s 40A of the Privacy Act, the Information Commissioner must attempt conciliation where it is reasonably possible conciliation may succeed. We publish a selection of de-identified

complaints to demonstrate the outcomes achieved with our assistance and to provide guidance to parties about potential outcomes.

In 2021–22, 91% of complaints closed during the year were finalised through our early resolution and conciliation processes.

Matters not resolved in conciliation are referred for investigation under s 40 of the Privacy Act.

Under s 41 of the Privacy Act, the Information Commissioner may decline to investigate a matter where, for example, no interference with privacy is detected, investigation is not warranted in the circumstances or where the respondent is adequately dealing with (or has dealt with) the complaint.

Under s 52 of the Privacy Act, after investigating a complaint, the Information Commissioner may make a determination dismissing the complaint or finding the complaint is substantiated and making declaration concerning remedial actions, such as compensation.

The Information Commissioner has powers to decline to investigate matters further. We finalised 141 privacy complaints using these powers. Around a third (31%) of these cases were finalised on the ground that the respondent had adequately dealt with the complaint. This includes cases where the OAIC assisted the parties to arrive at a fair and reasonable remedy for the alleged privacy breach. See case study 2.3.1 on page 39.

While most privacy complaints were finalised through our early resolution and investigation processes (including conciliation), 14 privacy complaints were finalised by a determination. Determinations may be made in any matter not resolved through other processes and tend to be made in more complex privacy complaints.

This year saw a rise in determinations made in relation to compliance with APP 12 (access to personal information). Five determinations were made in relation to APP 12. In all but one of the 5 determinations, the entity was found to have interfered with the individual's privacy. See case study 2.3.2 on page 39.

The determinations made in 2021–22 also revealed non-compliance on the part of entities that disclosed personal information for secondary purposes. See case study 2.3.3 on page 39.



## Privacy complaint outcomes case studies

### Case study 2.3.1: Investigation declined as 'adequately dealt with'

The complainant submitted medical certificates and psychiatric assessments to their employer to support their application for personal leave. The respondent uploaded sensitive information from these documents to an electronic system for processing leave. The information included the diagnosis and the fact that the complainant's illness had been certified by a psychiatrist. Nine entries of this nature were visible on the system for over 15 months. The respondent failed to remove the entries on request, only doing so 6 weeks after the person complained to the OAIC.

The OAIC facilitated conciliation, which was unsuccessful. The respondent made an offer that the complainant rejected. The OAIC gathered information and evidence and told the respondent that the matter may be referred to the Information Commissioner for determination. The respondent made a further offer that the complainant accepted. The investigation was discontinued on the basis that the respondent had adequately dealt with the complaint.

### Case study 2.3.2: 2 determinations involving APP 12

In *'ZG' and Sydney Catholic Schools Ltd (Privacy)* [2021] AICmr 89 (16 December 2021), the complainant sought access to their personal information contained in a report drafted by an external investigator in relation to student bullying allegations. The respondent provided access to a summary of the report but declined to provide the report in full, relying on various exceptions, including that the report was protected by legal professional privilege. The respondent failed to satisfy the Information Commissioner that the exceptions applied. The Information Commissioner declared that the respondent was required to provide the report to the complainant.

This can be contrasted with *'ZN' and a School (Privacy)* [2021] AICmr 95 (17 December 2021) where the complainant sought access to all person information in relation to an incident investigated

by the respondent. The respondent satisfied the Information Commissioner that exceptions applied to the documents by providing detailed statutory declarations.

### Case study 2.3.3: Determinations involving APP 6

In *'XU' and Amazon Australia Services Inc (Privacy)* [2021] AICmr 42 (30 August 2021), the respondent disclosed to a third party the name and contact details of an individual who had anonymously published a book using its platform. The third party alleged the complainant had published defamatory material and requested removal of the material. The respondent argued disclosure was reasonably necessary for the third party to establish a legal claim. In the absence of anything to show a legal claim was on foot or anticipated, and in circumstances where the third party did not ask for the personal information, the respondent was found to have breached APP 6. The Information Commissioner provided declaratory relief in the form of compensation for non-economic loss.

## Indicator 2.4: Ensure timely handling of data breach notifications



### Measure

(1) Time taken to resolve Notifiable Data Breaches (NDBs)



### Target: 80% of NDBs are finalised within 60 days

Achieved

In 2021–22, the OAIC received 853 notifications under the NDB scheme and resolved 896. We finalised 81% of notifications within 60 days.



## Notifiable Data Breaches scheme case studies

### Case study 2.4.1: Directing notification

A software as a service (SaaS) platform's user data was accessed without authorisation and shared online. The organisation managed business operations for its corporate clients whose customers used the software to book services.

The organisation advised its corporate clients of the data breach and left the decision about whether to notify affected customers at its corporate clients' discretion. The corporate clients were inconsistent in their approach to notifying their customers, so not all affected individuals were advised of the breach.

Where an entity does not provide notification of an eligible data breach, s 26WR of the Privacy Act states the Information Commissioner can direct an entity to notify individuals at risk of serious harm.

The Information Commissioner advised the organisation of the intention to issue a direction under s 26WR. In response, the organisation initiated a notification process, which involved ensuring that around 100,000 individuals identified to be at risk of serious harm were notified either by the corporate clients or the organisation directly.

### Case study 2.4.2: Ransomware

An organisation was subject to a ransomware attack, resulting in files on its servers being encrypted. The files contained personal information of children and their guardians using the organisation's services, as well as current and some former employees.

While it was unclear whether the files were exfiltrated (a form of data theft), the organisation concluded that, at a minimum, the files were accessed. The organisation assessed its records and determined the personal information that may have been accessed included contact, identity, health, financial and criminal history information, and tax file numbers.

The organisation notified all affected individuals and families. It also engaged a cyber security consultant to investigate the data breach and improved its security posture in line with the consultant's advice and recommendations.

## Notifiable Data Breaches scheme reports

We published our *Notifiable Data Breaches report January–June 2021* on 23 August 2021 and the *Notifiable Data Breaches report July–December 2021* on 22 February 2022.

These reports provide government and industry with insights into trends in data breaches. They also assist with improving awareness and understanding of data breach risks and steps entities can take to prevent them occurring.

The OAIC's data breach reports also highlight emerging issues and areas for ongoing attention by entities entrusted with protecting personal information.



### Measure

(2) Time taken to resolve My Health Record notifications



**Target: 80% of My Health Record notifications are finalised within 60 days**

Not achieved

The OAIC finalised 67% of My Health Record data breach notifications within 60 days. We finalised 3 notifications during the reporting period, 2 within 60 days.



### Measure

(3) Time taken to resolve National Cancer Screening Register Act (NCSRA) notifications



**Target: 80% of NCSRA NDBs are finalised within 60 days**

Achieved

We finalised 100% of NCSRA data breach notifications within 60 days.

## Indicator 2.5: Conduct Commissioner-initiated investigations



### Measure

Time taken to finalise privacy and FOI CII.



### Target: 80% of CII are finalised within 8 months

Not achieved

A CII is conducted in response to the identification of a significant risk. The OAIC did not conduct any FOI CII during the reporting period.

## Privacy CII

Under ss 40(2) of the Privacy Act, the Information Commissioner may, on her own initiative, investigate acts or practices that may be an interference with privacy. This power is used to investigate possible interferences with privacy that have not been raised through a privacy complaint. The primary objective of CII is to improve the privacy practices of investigated entities and the regulated community, and instil public confidence in the protection of personal information.

During 2021–22, we opened 7 privacy CII and finalised 4 CII, completing one within our 8-month target. At 30 June 2022, 8 privacy CII were ongoing.

The lower number of CII opened and closed this reporting period, compared to the last period, reflects our focus on finalising older investigations, the growing complexity and size of some of our current investigations and available resources.

The Information Commissioner also made the following 3 CII determinations in relation to facial recognition tools:

- 7-Eleven Stores Pty Ltd: The Information Commissioner determined 7-Eleven interfered with customers' privacy by collecting sensitive biometric information that was not reasonably necessary for its functions and without adequate notice or consent.

- Clearview AI, Inc.: The Information Commissioner determined, following a joint investigation with the UK ICO, that Clearview AI breached Australians' privacy by scraping their biometric information from the web and disclosing it through a facial recognition tool.
- Australian Federal Police: The Information Commissioner determined the AFP failed to comply with its privacy obligations in using the Clearview AI facial recognition tool.

Following an earlier CII, the OAIC continued to pursue civil penalty proceedings in the Federal Court against Facebook Inc and Facebook Ireland Limited in relation to allegations that the personal information of Australian Facebook users had been improperly collected by third-party applications.

**Table 2.5.1: Privacy Commissioner-initiated investigations opened and closed**

Year	2019–20*	2020–21	2021–22
Number of CII opened	19	4	7
Number of CII closed	21	10	4

\* Reporting for the 2019–20 period included preliminary inquiries, which are inquiries that may lead up to, but do not include a CII. These inquiries are no longer included in our CII statistics.





## CII case studies

### Case study 2.5.1: 7-Eleven CII

On 29 September 2021, the Information Commissioner determined 7-Eleven had interfered with the privacy of customers whose facial images and 'faceprints' it had collected through a customer feedback mechanism.

From 15 June 2020 to 24 August 2021, 7-Eleven collected customers' facial images while they were filling out an in-store survey. The facial images were used to generate algorithmic representations, or 'faceprints'. These were matched together through facial recognition technology to exclude responses that may not have been genuine and for demographic profiling. As at March 2021, 1.6 million surveys had been completed across 700 stores.

The Information Commissioner found:

- The facial images and faceprints were sensitive information because they were biometric information used for the purpose of automated biometric identification. The faceprints were also biometric templates.
- The large-scale collection of sensitive biometric information through this customer feedback mechanism was not reasonably necessary for the purpose of understanding and improving customers' in-store experiences.
- Customers did not give either express or implied consent.

In response to our investigation, 7-Eleven ceased collecting facial images and faceprints as part of its customer feedback mechanism.

The determination ordered 7-Eleven to destroy all faceprints it had collected.

### Case study 2.5.2: Clearview AI CII

On 14 October 2021, the Information Commissioner determined Clearview AI interfered with the privacy of Australians by scraping their biometric information

from the web and disclosing it through a facial recognition tool.

The determination followed a joint investigation by the OAIC and the UK ICO.

Clearview AI's facial recognition tool includes a database of over 3 billion images taken from social media platforms and other publicly available websites. The tool allows users to upload a photo of an individual's face and find and link to other facial images of that person collected from the internet for identification purposes.

Between October 2019 and March 2020, Clearview AI provided trials of the facial recognition tool to some Australian police forces, which conducted searches using facial images of individuals located in Australia.

The Information Commissioner found Clearview AI breached the Privacy Act by:

- collecting Australians' sensitive information without consent
- collecting personal information by unfair means
- not taking reasonable steps to notify individuals of the collection of personal information
- not taking reasonable steps to ensure personal information it disclosed was accurate, having regard to the purpose of disclosure
- not taking reasonable steps to implement practices, procedures and systems to ensure compliance with the APPs.

The Information Commissioner found the privacy impacts of Clearview AI's biometric system were not necessary, legitimate and proportionate, having regard to any public interest benefits. The Information Commissioner considered that Australians using social media or professional networking sites do not expect their facial images to be collected without their consent by a commercial entity to create biometric templates for unrelated identification purposes. She also raised concerns that the indiscriminate scraping of the facial images of people, only a fraction of whom would ever be connected with law enforcement

investigations, may adversely impact the personal freedoms of all Australians who perceive themselves to be under surveillance.

The determination ordered Clearview AI to cease collecting facial images and biometric templates from individuals in Australia and to destroy existing images and templates collected in Australia.

Clearview AI has applied to the Administrative Appeals Tribunal (AAT) for review of the determination. The AAT provides independent merits reviews of administrative decisions and has the power to set aside, vary or affirm a privacy determination. The AAT proceedings are ongoing in 2022–23.

### Case study 2.5.3: AFP CII

On 26 November 2021, the Information Commissioner determined the AFP failed to comply with its privacy obligations in using the Clearview AI facial recognition tool.

Between 2 November 2019 and 22 January 2020, Clearview AI provided free trials of its facial recognition tool to members of the AFP-led Australian Centre to Counter Child Exploitation (ACCCE). ACCCE members uploaded facial images of Australians to test the functionality of the tool and, in some cases, to try to identify persons of interest and victims in active investigations.

The Information Commissioner found the AFP:

- failed to complete a privacy impact assessment (PIA) before using the tool, in breach of clause 12 of the Privacy (Australian Government Agencies – Governance) APP Code, which requires a PIA for all new high privacy risk projects
- breached APP 1.2 by failing to take reasonable steps to implement practices, procedures and systems in relation to its use of Clearview AI to ensure it complied with clause 12 of the code.

The Information Commissioner considered the AFP did not have in place appropriate systems to identify, track and accurately record its trial of this new investigative technology involving personal information handling. There were also gaps in the AFP's mandatory privacy training, including insufficient information about conducting PIAs.

These gaps were particularly relevant for teams like the ACCCE that explore new and innovative investigative solutions, including capabilities for identifying potential offenders and victims.

The Information Commissioner acknowledged the AFP's commitment to reviewing and strengthening its privacy governance framework and embedding a culture of privacy compliance across the agency.

The Information Commissioner directed the AFP to:

- engage an independent assessor to review and report to the OAIC on residual deficiencies in its practices, procedures, systems and training in relation to PIAs and make any necessary changes recommended in the report
- ensure relevant AFP personnel have completed an updated privacy training program.

## Indicator 2.6: Provide Information Commissioner review of FOI decisions made by agencies and ministers



### Measure

Time taken to finalise IC reviews



### Target: 80% of IC reviews are completed within 12 months

Achieved

The OAIC finalised 1,392 IC reviews in 2021–22, a 37% increase compared to 2020–21, when we finalised 1,018. We finalised 83% of IC reviews (1,158) within 12 months. This was an improvement on 2020–21, when we finalised 73% (740) within 12 months.

We finalised 1,001 IC reviews (72%) within 120 days, compared to 580 IC reviews (57%) within the same period in 2020–21. The average time taken to finalise an IC review was 6.3 months, compared to 8.3 months in 2020–21.

Under s 55K of the FOI Act, the Information Commissioner, after undertaking an IC review, must make a decision in writing to either affirm or vary the decision of the agency or minister or to set it aside and

make a fresh decision. The Information Commissioner, Acting FOI Commissioner and FOI Commissioner issued 103 decisions under s 55K of the FOI Act compared to 54 in 2020–21. Fifty-seven affirmed the decision under review, 36 set aside the decision and 10 varied the decision. Of the 103 decisions, 26 were made following the respondent agency making a revised decision under s 55G of the FOI Act. The Commissioner affirmed 10 such decisions, set aside 14 decisions and varied 2 decisions.

Under s 55G of the FOI Act, at any time during an IC review, an agency or minister may revoke or vary an access refusal decision to favour the applicant. This can be done by giving access to a document, relieving the applicant from liability to pay a charge, or requiring a record of personal information to be amended or annotated in accordance with the application.

Of the 1,392 IC reviews finalised in 2021–22, a significant number (314 or 23%) were closed under s 54N as invalid (out of jurisdiction, misdirected, out of time, copy of decision not provided or not an IC-reviewable decision). As a proportion, this is fewer than the number of matters (285 or 28%) closed as invalid under s 54N in 2020–21.

In total, 659 IC reviews were closed under s 54R as withdrawn, an increase from 266 in the previous reporting period. Of these, 479 were finalised following a revised decision to provide access being made under s 55G. This is a significant increase from 2020–21, when 161 IC reviews were finalised under s 54R following a revised decision. Of the 479 IC reviews finalised under s 54R following a revised decision, 445 involved a deemed access refusal decision.

The increased number of finalisations was achieved amid another significant increase in IC review applications. During 2021–22, the OAIC received 1,995 IC reviews – a 63% increase compared to 2020–21 when we received 1,224. This was mainly due to an increase in the number of IC reviews of deemed access refusal decisions from 465 in 2020–21 to 1,107 in 2021–22. Despite the increased number of finalisations, the number of IC reviews on hand increased from approximately 1,316 in 2020–21 to around 1,874 in 2021–22.



## IC review decisions case studies

### Case study 2.6.1: ‘ABP’ and Australian Taxation Office (Freedom of information) [2022] AICmr 51 (31 May 2022)

The applicant sought documents related to reports made to the Australian Taxation Office (ATO) about their alleged undisclosed income. The ATO responded to the applicant’s FOI request by neither confirming nor denying the existence of the requested documents under s 25(2) of the FOI Act and advising the applicant that if the documents were to exist, they would be exempt on the basis they would disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law (s 37(1)(b)) of the FOI Act).

The Freedom of Information (FOI) Commissioner noted there is no binding decision of a court concerning the proper interpretation of s 25 of the FOI Act, however, the interpretation of s 25 has been the subject of some non-binding judicial observations and an AAT decision. The FOI Commissioner considered the correct and preferable interpretation of s 25 to be the interpretation adopted by *Forster J Department of Health v Jephcott* (1985) 8 FCR 85, which requires, firstly, the notional creation of a hypothetical document and, secondly, consideration of whether such a hypothetical document, if it existed, would be an exempt document by virtue of one of the relevant exemption provisions referred to in s 25.

In affirming the ATO’s decision, the FOI Commissioner noted the applicant’s request relates specifically to a suspected tip-off disclosing allegations of undisclosed income and was satisfied that disclosure of the existence or non-existence of any document in the nature of the documents requested could reasonably be expected to, at the least, enable the applicant to ascertain the existence or non-existence of a confidential source of information.

### **Case Study 2.6.2: 'XY' and Torres Strait Regional Authority (Freedom of information) [2021] AICmr 46 (10 September 2021)**

A person applied to the Torres Strait Regional Authority (TSRA) for access to documents relating to communications between the chair of the TSRA and a third party (the IC review applicant). The TSRA undertook third-party consultation with the IC review applicant, who objected to the disclosure of the documents.

The TSRA decided to grant access in part or in full to 207 documents. In making its decision, the TSRA relied on the legal professional privilege exemption (s 42), the deliberative processes exemption (s 47C), the certain operations of agencies exemption (s 47E(d)), the personal privacy exemption (s 47F) and the business affairs exemption (s 47G). The TSRA also deleted material it considered to be irrelevant to the request under s 22 of the FOI Act.

The IC review applicant then sought IC review of the TSRA's decision to release the documents (access grant decision) and submitted the documents should be exempt in full under ss 47F and 47G of the FOI Act.

The Acting FOI Commissioner considered the applicant had not explained how disclosing their personal information relating to their activities in association with the TSRA would be an unreasonable disclosure of personal information for the purposes of s 47F when this information is well known and the IC review applicant is known to be associated with those activities. For similar reasons, the Acting FOI Commissioner was not satisfied that disclosure of the documents would, or could reasonably be expected to, unreasonably affect the IC review applicant adversely in respect of their lawful business or professional affairs under s 47G.

### **Case study 2.6.3: Rex Patrick and Department of Agriculture, Water and the Environment (Freedom of information) [2021] AICmr 57 (15 October 2021)**

The applicant sought access to a 'preliminary draft report into possible use of South Australia's desalination plant to provide an offset for the water extracted from the River Murray'.

The Department of Agriculture, Water and the Environment (DAWE) identified one document within the scope of the request, described as a draft version of the River Murray Efficient Measures Feasibility Study. One of the third parties consulted by DAWE, the South Australian Department for Environment and Water (DEW), objected to the release of the document on the basis that the Commonwealth-state relations exemption (s 47B) applies.

DAWE then refused access to the document relying on the Commonwealth-state relations exemption (s 47B) and the deliberative processes exemption (s 47C).

In setting DAWE's decision aside, the Acting FOI Commissioner noted the final report was published after DEW objected to the release of the document and DAWE had not provided sufficient details of why they continued to object following its publication. The Acting FOI Commissioner noted the similarities between the 2 documents and was not satisfied that the damage to Commonwealth-state relations would or could reasonably be expected to occur.

In relation to s 47C, the Acting FOI Commissioner was satisfied the document contains deliberative matter in the form of opinions and recommendations. However, the Acting FOI Commissioner concluded giving the applicant access to the document at this time would not, on balance, be contrary to the public interest because the deliberative process had concluded and access would promote the objects of the FOI Act, inform debate on a matter of public importance and promote effective oversight of public expenditure.

### **Case study 2.6.4: Paul Farrell and Department of Home Affairs (Freedom of information) (No 2) [2022] AICmr 49 (8 April 2022)**

The applicant requested access to documents relating to the Republic of Nauru's Overseas Medical Referral process for people seeking asylum and refugees.

The Department of Home Affairs decided to give access to each of the 3 documents in part, deleting some material in the documents that it considered to be irrelevant to the request (s 22) and relying on the damage to international security exemption (s 33(a)(iii)), the certain operations of agencies exemption (s 47E(d)), and the personal privacy exemption (s 47F).

The Information Commissioner set aside Home Affairs' decision in part.

*Damage to international relations (s 33(a)(iii))*

The Information Commissioner found the level of detail in the material is not in the public domain and accepted Home Affairs' submissions that Nauru would likely object to its disclosure. In affirming this aspect of the decision, the Information Commissioner was satisfied the passage of time since the documents were created has not diminished the sensitivity of the relevant material, particularly given Australia and Nauru's ongoing partnership or relationship in relation to Australia's policy of 'offshore processing of people seeking asylum and refugees'.

*Certain operations of agencies exemption (s 47E(d))*

Home Affairs found 2 portions of material to be exempt under s 47E(d), namely a paragraph in an internal minute-style document and a column and handwritten notes on a single-page chronology document. In setting aside this aspect of the decision, the Information Commissioner noted Home Affairs had not sufficiently explained how disclosure could open the Commonwealth to legal exposure or how persons could use the information to exploit Australia's border protection policies.

*Personal privacy exemption (s 47F)*

The Information Commissioner considered the personal information, which included names and medical information of asylum seekers and refugees, is not well known nor publicly available and its disclosure would, in those circumstances, be unreasonable.

In finding that giving access to the material at this time was, on balance, contrary to the public interest, the Information Commissioner noted that while disclosure would promote the objects of the FOI Act and reveal health risks of measures relating to public health and safety, it would also prejudice certain individuals' rights to privacy.

**Case study 2.6.5: Jonathan Kearsley and Australian Federal Police (Freedom of information) [2022] AICmr 55 (30 June 2022)**

The applicant applied to the AFP for access to written correspondence of a specified date between the AFP

and the then Minister for Home Affairs that refers to a named third-party individual (who became the third party in this IC review).

The AFP refused access to the document at issue based on the personal privacy exemption (s 47F). During the IC review, the AFP submitted the document is also exempt in part under the damage to security of the Commonwealth exemption (s 33(a)(i) and exempt in full under the certain operations of agencies exemption (s 47E(d)).

The Information Commissioner set aside the AFP's decision for the following reasons.

*Damage to national security exemption (s 33(a)(i))*

The AFP submitted that disclosure of certain material in the document would or could reasonably be expected to damage the security of the Commonwealth. In finding the material was not exempt under s 33(a)(i), the Information Commissioner noted the AFP had not provided sufficient evidence to demonstrate this.

*Certain operations of agencies exemption (s 47E(d))*

The AFP submitted that disclosure of the document would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the AFP by:

- compromising frank and candid briefings to the Minister of Home Affairs on sensitive matters
- impacting the relationship of mutual trust and confidence between the AFP and the Minister for Home Affairs.

The Information Commissioner considered the AFP was essentially making 'frankness and candour' arguments in the context of s 47E(d). Having examined the document and considered the relevant criteria, the Information Commissioner was not satisfied the AFP has discharged its onus of establishing either that:

- the disclosure of the document could be reasonably expected to result in the adverse effects listed by the AFP, or
- if there were any adverse effects, that they would be substantial in nature.



### Personal privacy exemption (s 47F)

The third party contended the AFP was not authorised to disclose their personal information in the document at issue to the then Minister for Home Affairs. However, the Information Commissioner was satisfied the AFP was able to disclose the third party's personal information in accordance with relevant legislation.

The AFP and the third party submitted that disclosure of the document would significantly impact the third party's privacy. However, the Information Commissioner was not satisfied disclosure would be unreasonable in this case. Balancing the private interest in the privacy of the third party with the advancing of the public interest in government transparency and integrity, the Information Commissioner was satisfied a public purpose would be served through the release of the document by increasing scrutiny, discussion, comment and review of the Australian Government's activities in accordance with the objects of the FOI Act.

recommendations were made under s 88 of the FOI Act, which requires agencies to implement the Information Commissioner's recommendations.<sup>2</sup> We publish these recommendations on our website under Freedom of information investigation outcomes.

### Common FOI complaint topics

Delays in processing an FOI request was the most common complaint about the handling of FOI matters by agencies, consistent with previous reporting periods. Other common complaints include:

- agencies not meeting statutory timeframes
- concerns regarding the conduct of consultations undertaken
- the imposition or amount of a charge
- poor customer service (most commonly failing to reply to correspondence, including acknowledgement of a request (s 15(5)))
- agencies not publishing or complying with the Information Publication Scheme (IPS) and disclosure log requirements
- transferring requests to other agencies under s 16 of the FOI Act.

## Indicator 2.7: Resolve FOI complaints



### Measure

Time taken to resolve FOI complaints



### Target: 80% of FOI complaints are finalised within 12 months

Not achieved

In 2021–22, the OAIC received 215 complaints about actions taken by agencies when handling FOI requests, an increase of 42% compared to 2020–21.

We finalised 223 FOI complaints, compared to 174 in 2020–21, an increase of 28%. We finalised 74% of FOI complaints within 12 months, with 56% of all complaints (124) being finalised within 120 days. A number of complex legacy matters from 2017 and 2018 were also finalised during this reporting period, which affected our ability to achieve the 80% target.

The finalised complaints included 77 that were withdrawn. Another 61 were finalised under s 86 of the FOI Act. This includes 42 complaints where

## Indicator 2.8: Improve agencies' processes for managing FOI requests



### Measure

Agencies accept and implement recommendations made following complaint investigations



### Target: 90% of recommendations made are accepted

Not achieved

<sup>2</sup> A complaint may have a number of issues that may result in a number of recommendations.

The OAIC made 39 recommendations upon the completion of FOI complaint investigations.<sup>3</sup> Investigation recommendations issued under s 88 of the FOI Act are recommendations to the respondent agency that the Information Commissioner believes that the respondent agency ought to implement to improve its compliance with its obligations under the FOI Act.

In 2021–22, respondent agencies accepted 85% or 33 recommendations, which they have either implemented or are in the process of implementing.

The Information Commissioner's recommendations to agencies include:

- issuing statements to all staff highlighting the agency's obligations under the FOI Act
- appointing information champions to provide high-level leadership and oversight to promote agency compliance with the FOI Act
- providing education and guidance to ensure FOI requests are processed in accordance with the objects of the FOI Act
- determining whether additional resources (human or otherwise) are needed to meet statutory timeframes and developing an action plan for obtaining those resources
- developing and publishing FOI and operational manuals, including policies and procedures ensuring adherence with, at a minimum, the requirements of the IPS, as well as processes supporting administrative access and release
- conducting a review and audit of the agency's FOI processing guidance material and compliance with statutory timeframes.

<sup>3</sup> A complaint investigation may result in the OAIC making a number of recommendations. This figure represents the total number of recommendations made across all FOI complaint investigations finalised where recommendations were made. This figure also captures 4 recommendations made in relation to a cohort of 17 matters where the investigation considered the same issue (non-compliance with the statutory processing period) and the recommendations made were the same across all complaints investigated. This had been recorded as 4 recommendations in total.

## FOI complaint compared to IC review

The Information Commissioner has the power to investigate agency actions about the handling of FOI matters as detailed in s 69 of the FOI Act.

The FOI Guidelines outline the Information Commissioner's view that making a complaint is not usually an appropriate mechanism where IC review is available – unless there is a special reason to undertake an investigation and the matter can be more appropriately and effectively dealt with in that manner.

This approach supports an individual's right to access information where the outcome they seek is more closely related to the merits review function.

There were 56 complaints made during 2021–22 that were declined on the basis that the complainant has or had a right to have the action reviewed by the agency, a court or a tribunal, or by the Information Commissioner under Part VII of the FOI Act, and had not exercised that right when it would be reasonable to do so (s 73(b)).

## Extensions of time

The FOI Act sets out timeframes within which agencies and ministers must process FOI requests. When an agency or minister is unable to process an FOI request within the statutory processing period, they may apply for an extension of time (EOT) from the FOI applicant or the Information Commissioner.

If the applicant agrees to an EOT in writing, the agency or minister must notify the Information Commissioner of the agreement to extend the statutory processing time as soon as practicable (s 15AA of the FOI Act).

An agency or minister can also apply to the Information Commissioner for an extension of the processing period:

- if they can demonstrate that processing the FOI request will take longer than the statutory timeframe because it is voluminous or complex in nature (s 15AB of the FOI Act)
- where they have been unable to process the request within the statutory timeframe and are deemed to have made a decision refusing the FOI request (ss 15AC, 51DA and 54D of the FOI Act).

We received 33% more notifications and applications for extensions of time during this financial year compared to 2020–21. The OAIC aims to respond to these applications within 10 calendar days.

**Table 2.8.1: FOI EOT notifications and requests received and closed**

Year	2019–20	2020–21	2021–22
Received	4,244	3,709	4,925
Closed	3,844	4,102	4,960

In relation to EOT applications requiring a decision of the Information Commissioner's delegates (ss 15AB, 15AC, 51DA and 54D of the FOI Act), there was a 60% increase in the number of applications finalised during this financial year compared to 2020–21.

When applying for EOTs, agencies continued to provide reasons relating to the COVID-19 pandemic as a cause for delay in processing FOI requests, particularly during the various lockdown periods. Reasons included redeployment of staff to frontline services and an inability to access hard copy files at offsite storage facilities.

**Table 2.8.2: FOI EOT notifications and requests closed by type**

Request type	2019–20	2020–21	2021–22
Section 15AA (notification of EOT agreements between agency and applicant)	2,393	3,029	3,212
Section 15AB (request to OAIC by agency where voluminous or complex)	786	507	890
Section 15AC (request to OAIC by agency where deemed refusal decision)	492	405	556
Section 51DA (request to OAIC by agency for EOT for dealing with amendment/annotation request)	5	2	4
Section 54D (request to OAIC by agency for EOT where deemed affirmation on internal review)	80	57	106
Section 54T (request to OAIC for EOT for person to apply for IC review)	88	102	192
<b>Total</b>	<b>3,844</b>	<b>4,102</b>	<b>4,960</b>

## 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 in s 89L of the FOI Act exist.

In 2021–22, the OAIC received 8 applications from agencies under s 89K of the FOI Act seeking to have

persons declared vexatious applicants and finalised 6 applications. One declaration under s 89K of the FOI Act was made during the reporting period.

Declarations are generally available in the Australian Information Commissioner (AICmr) database on AustLII.

## Indicator 2.9: The OAIC promotes awareness of privacy and access to information



### Measure

The OAIC leads campaigns such as International Access to Information Day and Privacy Awareness Week.



### Target: 2 major campaigns undertaken each calendar year

Achieved

### International Access to Information Day 2021

The OAIC marked IAID on 28 September 2021. The event recognises the importance of the community's right to access information held by governments. In partnership with state and territory regulators, we promoted the theme 'Open by design', highlighting the need for governments to consider how they will make information accessible at the outset of policy development, projects and service delivery, and release information proactively.

The OAIC developed a campaign website (viewed over 4,200 times) and supporter toolkit (accessed over 700 times). The website and toolkit featured resources for the community and Australian Government agencies and ways to get involved in the campaign. Other activities included over 60 posts across OAIC social media pages that reached over 565,000 users, 5 IAID newsletters, 2 media statements and the development of a joint animation with members of the Association of Information Access Commissioners (AIAC).



We also hosted an information session attended by 75 members of our Information Contact Officers Network (ICON). The session featured a keynote address by Commissioner Falk and a presentation by New Zealand Parliamentary Deputy Ombudsman Bridget Hewson. It also included a discussion on proactive publication and information access during times of heightened activity and significant public scrutiny with Acting FOI Commissioner Elizabeth Hampton and Federal Court of Australia General Counsel Scott Tredwell.

### Privacy Awareness Week 2022

PAW is an initiative of the APPA forum. It is held every year to promote and raise awareness of privacy issues and the importance of protecting personal information. For the OAIC, PAW provides an opportunity to promote awareness of our role and privacy rights and responsibilities to regulated entities and the community.

The OAIC led the Australia-wide campaign for PAW 2022 from 2 to 8 May, in partnership with state and territory privacy regulators. Our campaign highlighted privacy as the foundation of trust and attracted a record 653 government and private sector supporters.

The OAIC developed dynamic PAW 2022 branding, a dedicated website, a comprehensive supporter toolkit and privacy tips for individuals, businesses and government agencies. OAIC speakers took part in 12 events for private sector organisations and Australian Government agencies with a combined audience of over 2,000 people. This included our virtual PAW launch event, which featured a keynote address from Commissioner Falk and speakers from Apple, the Consumer Policy Research Centre and Services Australia.



## Social media

We have continued to grow the OAIC's reach on social media, which is an important channel for promoting awareness of privacy and information access rights and responsibilities.

Over the reporting period:

- LinkedIn followers increased by 39% to 6,932.
- Twitter followers increased by 7% to 6,763.
- Facebook followers increased by 3% to 4,155.

## Information Matters

We send our monthly Information Matters newsletter to over 8,200 subscribers, a 2% increase on 2020–21. The newsletter updates our stakeholders on the latest OAIC news, guidance, resources and decisions.

## Events

Our speeches and engagements program assists us to achieve our strategic priorities. The OAIC had 42 speaking engagements in the reporting period. The external events we participated in included:

- Australian Government Solicitor FOI and Privacy Forum
- GRC2021 Conference (GRC Institute)
- Future of Financial Services, Sydney (FST Media)
- KWM Digital Future Summit (King & Wood Mallesons)
- International Conference of Information Commissioners
- Australian Bar Association National Conference
- European Data Protection Supervisor Conference
- South Pacific Audit Conference (Institute of Internal Auditors Australia).

A list of upcoming and recent events is available on our website.

## Media enquiries

Media engagement is effective for communicating the OAIC's regulatory priorities and expectations to a broad audience. In the reporting period, we received 145 media enquiries, a 1% decrease compared to 2020–21.

**Table 2.9.1: Media enquiries received by month**

Month	2020–21	2021–22
July	10	12
August	17	18
September	25	23
October	12	6
November	13	21
December	3	3
January	14	6
February	5	12
March	6	13
April	18	4
May	12	9
June	12	18
<b>Total</b>	<b>147</b>	<b>145</b>

## Indicator 2.10: The OAIC promotes awareness of Consumer Data Right privacy rights



### Measure

Education and awareness materials are developed and promoted



### Target: Information on the OAIC website is updated when required by CDR developments

Achieved

Since the launch of the CDR in the banking sector on 1 July 2020, the OAIC has continued to develop and promote educational and awareness materials to ensure consumers and participants understand their rights and obligations under the system.

We developed resources for consumers to help them consider whether it may be appropriate for them to complain to the OAIC if they believe an entity has mishandled their CDR data. We published new resources for participants on their key privacy obligations under the CDR regulatory framework. This included 8 new guides to help participants understand and comply with privacy obligations arising from changes introduced by the 'version 3' amendments to the Competition and Consumer (Consumer Data Right) Rules 2020. For more information, see Published CDR guides.

The OAIC completed our first privacy assessment, which examined the initial data holders' compliance with Privacy Safeguard 1. This requires participants to have a policy describing how they manage consumer data and to implement internal practices, procedures and systems to ensure compliance. The findings of this assessment helped all CDR participants, not just the initial data holders, to better understand and fulfil their obligations.

We worked closely with our co-regulator, the ACCC, to assess all contacts received via the CDR website. This included 51 contacts referred to the ACCC and 61 referred to the OAIC. A number of these contacts were found to relate to general privacy issues, not the CDR. The OAIC also receives contacts through other means, such as email and phone. In total, we handled 40 enquiries and no complaints about the CDR during the year.

We featured CDR resources and updates in 4 of our Information Matters newsletters and 21 social media posts and contributed regularly to the Treasury's CDR newsletter. Our CDR policy team presented on the privacy aspects of the CDR at the Future of Financial Services Sydney conference on 9 November 2021.

### Published CDR guides

We published the following new CDR guides on our website during 2021–22:

- Trusted advisers in the Consumer Data Right system
- Sponsored accreditation model – Privacy obligations of sponsors
- Sponsored accreditation model – Privacy obligations of affiliates
- CDR representative model – Privacy obligations of CDR principals
- CDR representative model – Privacy obligations of CDR representatives
- CDR outsourcing arrangements – Privacy obligations for principals of outsourced service providers
- CDR outsourcing arrangements – Privacy obligations for outsourced service providers
- CDR insights.



## CDR videos

The OAIC released 3 videos to help CDR participants and consumers understand some of the privacy aspects of the CDR.

- CDR Privacy Safeguard 1 – explains the practices, procedures and systems that will help accredited data recipients and data holders comply with the CDR privacy safeguards
- CDR policy – explains what a CDR policy is and provides tips on developing a strong policy
- Consumer Data Right complaints – explains how consumers can make a complaint and how CDR complaints are handled.

We promoted the videos across our social media channels, Information Matters newsletter and the Treasury's CDR newsletter. All 3 videos are also available to watch on the OAIC YouTube channel.



Indicator 2.11: Australians are confident about the system of oversight of privacy and security of the COVIDSafe app



### Measure

(1) Assessment program identifies any privacy risks



### Target: 2 assessments conducted and outcomes published

Achieved

In May 2020, the *Privacy Amendment (Public Health Contact Information) Act 2020* expanded the OAIC's

assessment powers under s 33C of the Privacy Act. The OAIC was given the power to assess whether the acts or practices of an entity or a state or territory authority comply with Part VIIIA of the Privacy Act in relation to COVID app data.

We developed a COVIDSafe Assessment Program, with 5 assessments examining compliance and risk throughout the information lifecycle of COVID app data.

During 2021–22, we finalised and published the report for COVIDSafe Assessment 3 and Assessment 4. Assessment 3 examined the COVIDSafe app's functionality, privacy policy and collection notices. Assessment 4 examined the retention, destruction and deletion of COVID app data.

We progressed the second COVIDSafe assessment, which assesses state and territory health authority contact tracing access controls. We will publish this report in 2022–23.

Our final COVIDSafe assessment, to be completed in 2022–23, will examine compliance of the Data Store Administrator with the deletion and notification requirements in Part VIIIA of the Privacy Act.



### Measure

(2) Effective enquiry, complaint and data breach notification systems



### Target: Enquiry, complaint and data breach systems available

Achieved

During 2021–22, we received 7 enquiries about the COVIDSafe system, including 5 from individuals, one from a private organisation and one from a government agency. We provided general information in response to 3 enquiries and provided assistance on how to make a complaint in response to 4 enquiries.

We did not receive any complaints or data breach notifications about the COVIDSafe system.

Section 94ZB of the Privacy Act requires the OAIC to report on the performance of the Information Commissioner's functions and the exercise of her powers under or in relation to Part VIIIA of the Privacy Act. We published 2 COVIDSafe reports in 2021–22, for the periods May to November 2021 and November 2021 to May 2022.

## Strategic priority 3

### Encourage and support proactive release of government-held information

The OAIC promotes a proactive approach to publishing government-held information. We focus on making better use of government-held information to support efficient access to information and facilitate innovation and engagement while ensuring privacy is protected.

#### Indicator 3.1: Agencies publish more government-held information proactively



##### Measure

The OAIC actively promotes proactive publication



**Target: The OAIC hosts 2 Information Contact Officers Network (ICON) events and publishes resources**

Achieved

The OAIC hosted one ICON event during the reporting period. In lieu of a second ICON event, we published a range of resources on a number of issues.

#### Information Contact Officers Network

ICON is a forum for Australian Government FOI practitioners. At the end of the reporting period, there were over 630 ICON members.

We held an information session for ICON members on 27 September 2021 ahead of IAID. The session was attended by 75 ICON members and covered a range of topics, including:

- an update from the Information Commissioner on recent developments and trends
- a discussion of 'open by design' principles to support the proactive release of government information
- proactive publication and information access through times of heightened activity and significant public scrutiny.

ICON members receive our Information Matters newsletter and targeted updates about information access news and events. We sent 11 Information Matters newsletters and 6 alerts to ICON members during the reporting period.

Ahead of IAID (see page 50), the OAIC and other members of the AIAC released a statement of principles to support proactive disclosure of government-held information. This was supported by a joint statement by Australian information access commissioners and ombudsmen to promote the proactive release of information.

#### Resources

In 2021–22, the OAIC updated sections of the FOI Guidelines, including Part 3 – Processing and deciding on requests for access, Part 10 – Review by the Information Commissioner and Part 12 – Vexatious applicant declarations.

We published the Direction as to certain procedures to be followed by applicants in Information Commissioner reviews and a quick guide to help FOI applicants navigate the direction.

We published the results of our longitudinal desktop review of 38 agencies' compliance with the disclosure log requirements in s 11C of the FOI Act. The Disclosure log desktop review assessed whether agencies and ministers are complying with their disclosure log obligations and the extent to which they make documents available for download from their websites. The report included key findings and recommendations to help all agencies and ministers improve their disclosure log practices. The review outcomes informed amendments to Part 14 of the FOI Guidelines.

## FOI processing statistics received from Australian Government agencies and ministers

Australian Government agencies and ministers must report FOI processing statistics to the OAIC every 3 months and at the end of the financial year.

These reports show the number of FOI requests received across Australian Government agencies decreased by 2% from 34,797 in 2020–21 to 34,236 in 2021–22. Requests for personal information were 6% lower than in 2020–21, while requests for other (non-personal) information were 12% higher than in 2020–21.

In 2021–22, 25,173 or 74% of all FOI requests were for documents containing personal information. This is a lower proportion than in previous years when between 77% (2020–21) and 87% (2015–16) of all requests were for personal information.

In 2021–22, the Department of Home Affairs, Services Australia and the National Disability Insurance Agency together received the majority of FOI requests (62% of the total). Of these, 89% were requests for access to personal information.

The percentage of FOI requests processed within the applicable statutory timeframe decreased from 77% in 2020–21 to 70% in 2021–22. There has been a decrease in timeliness of decision making over the past 4 years from 2018–19, when 83% of all decisions were decided within the applicable statutory timeframe.

The percentage of FOI requests granted in full decreased from 41% of all requests decided in 2020–21 to 39% in 2021–22. The percentage granted in part

increased from 41% in 2020–21 to 42% in 2021–22. The percentage of FOI requests refused increased from 18% of all FOI requests decided in 2020–21 to 19% in 2021–22.

The personal privacy exemption in s 47F of the FOI Act remains the most claimed exemption (39% of all exemptions claimed – slightly higher than in 2020–21 when it comprised 38% of all exemptions claimed).

Agencies and ministers issued 2,353 notices advising of an intention to refuse a request for a practical refusal reason in 2021–22. This is a 25% decrease on the number issued in 2020–21. Of these requests, 54% were subsequently refused or withdrawn; that proportion was 48% in 2020–21.

There was a 10% increase in the total charges agencies notified in 2021–22 (\$272,928), but there was a 7% decrease in the total charges collected by agencies (\$75,537).

The total reported costs attributable to processing FOI requests in 2020–21 were \$64.56 million, a 5% increase on 2020–21 (\$61.48 million).

The total number of new entries added to agency website disclosure logs in 2021–22 (2,647) is 7% higher than 2020–21, when 2,480 new entries were added.

There was a 7% decrease in internal review applications in 2021–22. The number of internal review decisions made (965) was almost the same as in 2020–21 (968). In 2021–22, 59% of the reviews affirmed the original decision (51% were affirmed in 2020–21).

For more information on FOI statistics received from Australian Government agencies and ministers, see Appendix E: FOI statistics.

## Indicator 3.2: The OAIC identifies and scrutinises policy and legislative reform proposals in relation to Australia's information management framework



### Measure

The OAIC influences policy and lawmakers in relation to the information management frameworks



### Target: Qualitative: The OAIC makes submissions and completes bill scrutiny tasks

Achieved

The OAIC has given timely and expert advice to the Australian Government regarding the impacts of legislative reform proposals on access to information.

During 2021–22, the OAIC provided 7 bill scrutiny comments and one published submission relating to FOI. These covered a broad range of subject areas, including Parliamentary workplace reform, the Australian Criminal Intelligence Commission, investment funds, a financial accountability regime, offshore electricity infrastructure and draft legislation for a Commonwealth Integrity Commission.

We provided a submission to the Senate Finance and Public Administration Legislation Committee's inquiry into the COAG Legislation Amendment Bill 2021, which was supported by state and territory information commissioners and ombudsmen. The Information Commissioner and 2 staff appeared at the committee's public hearing.

The Information Commissioner appeared before the Royal Commission into Defence and Veteran Suicide.

The OAIC was consulted on reforms relating to nondisclosure duties and secrecy offences in Commonwealth legislation.

## Strategic priority 4

### Contemporary approach to regulation

The OAIC takes a contemporary approach to our regulatory role in promoting and upholding Australia's privacy and FOI laws. This means we engage with and respond to the community's expectations of regulators.

The OAIC is committed to developing a capable, multidisciplinary workforce with a breadth of technical skills to provide guidance and advice and take regulatory action.

Indicator 4.1: The OAIC takes timely and effective regulatory action in relation to strategic privacy and access to information risks



#### Measure

Regulatory Action Committee (RAC) meets regularly and provides clear direction



**Target: (i) RAC meets 8 times annually**

**Target: (ii) RAC decisions take into account OAIC stated priorities**

Achieved

The RAC made decisions about a range of regulatory responses in relation to acts and practices that may be interferences with privacy. In 2021–22, the RAC met 5 times (July 2021, August 2021, November 2021, March 2022 and May 2022) and also considered some matters out of session. Five meetings in the financial year were sufficient to provide strategic advice and guidance to the Information Commissioner. For more information, see OAIC Regulatory Action Committee.

The RAC made decisions about regulatory responses, including opening CII and directing the drafting of determinations or administrative warnings. Updates were also provided on new and emerging privacy issues and on the development of guidance material.

In accordance with the RAC terms of reference, decisions had regard to the OAIC's strategic priorities and *Privacy regulatory action policy*. In deciding the most appropriate regulatory response to an interference with privacy, the RAC also took into account the action most likely to prevent, deter,

### OAIC Regulatory Action Committee

The OAIC established the RAC in October 2020.

RAC members are the OAIC Executive and senior staff who advise the Information Commissioner in relation to significant regulatory action. The RAC ensures the OAIC responds appropriately to emerging and potentially significant privacy risks.

The RAC considers matters identified from a range of sources, including scanning the domestic and international environments, information provided to the OAIC by members of the public, complaints, enquiries, preliminary inquiries, assessments and data breach notifications.

The range of regulatory responses the RAC may consider includes:

- undertaking an assessment in relation to a particular entity or sector
- commencing a CII
- pursuing a particular regulatory action following a CII, such as a determination or civil penalty proceedings
- publishing guidance material.

In considering matters, the RAC assesses the privacy risks against the OAIC's strategic objectives and regulatory priorities and makes recommendations to the Information Commissioner on the appropriate regulatory response, in accordance with our *Privacy regulatory action policy*.

rectify and remedy by changing behaviour from that which interferes with privacy to behaviour that upholds

the objects and requirements of the Privacy Act and increases the likelihood of future compliance.

## Privacy assessments

In 2021–22, the OAIC assessed privacy practices of Australian Government agencies and entities in the telecommunications, banking and health sectors. We closed 8 assessments in the reporting period.

We continued assessments begun the previous financial year that examined large cohorts of entities, including all Australian Government agencies covered by the Privacy Act and a selection of entities in the digital health sector. Our assessments covered a range of areas. We examined obligations under APP 1 (open and transparent management of personal information), APP 5 (notification of the collection of personal information) and APP 11 (security of personal information). We also assessed compliance with Part VIIIA of the Privacy Act, record keeping obligations under the *Telecommunications Act 1997*, and how CDR data holders complied with Privacy Safeguard 1 under the *Competition and Consumer Act 2010*.

We used a range of methods to conduct our assessments, including surveys, desktop reviews, comprehensive reviews of policy documents, in-person and remote interviews with staff and site inspections. In response to ongoing logistical challenges to fieldwork caused by the COVID-19 pandemic, such as lockdowns, travel restrictions, border closures and social distancing, we adapted our approach to assessment fieldwork. Where assessment scope and methodology permitted, we conducted fieldwork interviews remotely via audio and video conferencing.

The businesses and government agencies we assessed accepted or noted all our recommendations.

## COVIDSafe Assessment Program

In May 2020, in response to the COVID-19 pandemic, the *Privacy Amendment (Public Health Contact Information) Act 2020* expanded the OAIC's assessment powers. They now include the power to assess whether the acts or practices of an entity or a state or territory health authority comply with Part VIIIA of the

Privacy Act in relation to COVID app data. In 2019–20, we began the COVIDSafe Assessment Program in relation to the COVIDSafe app. We completed 2 assessments in the COVIDSafe Assessment Program in the reporting period.

## Australian Capital Territory Government

Under our MOU with the ACT Government, we finalised our assessment of Housing ACT, which we commenced the previous financial year. For more information on our MOU with the ACT Government, see Appendix D.

## Australian Government PIA register assessment

We continued our assessment of Australian Government agencies' compliance with the requirement to publish a PIA register under s 15.1 of the Privacy (Australian Government Agencies – Governance) Code 2017.

A PIA is a systematic assessment of a project that identifies privacy impacts and sets out recommendations for managing, minimising or eliminating that impact. PIAs are an important component in the protection of privacy and should be part of an agency's risk management and planning processes.

The assessment has involved a desktop review of most agency websites to examine compliance with the PIA register requirements of the code. We published our findings on our website throughout 2021–22 for the Home Affairs, Social Services, Foreign Affairs and Trade, Health and Treasury portfolios.

## Digital health assessments

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



We continued one assessment relating to the My Health Record system that began in the previous financial year and we started a new assessment in 2021–22. We will finalise both assessments in 2022–23. For more information, see the *Annual report of the Australian Information Commissioner's activities in relation to digital health 2021–22* on our website.

### Passenger name record data

Air carriers' transfer of European Union (EU) passenger name record (PNR) data to Home Affairs is governed by an agreement between Australia and the EU. Home Affairs receives EU PNR data from air carriers when information necessary for processing or controlling a passenger's air travel reservation for a flight to, from or through Australia is processed in the EU. During the reporting period, the OAIC commenced one assessment of Home Affairs' handling of EU-sourced PNR data, which will be completed in 2022–23.

### Section 309 of the Telecommunications Act

In 2021–22, we finalised inspections of carriers' and carriage service providers' compliance with Part 13, Division 5 of the Telecommunications Act. These

inspections began in 2020–21. Part 13 requires carriers and carriage service providers to record certain disclosures of personal information, including disclosures of telecommunications data collected and retained under the data retention scheme, to law enforcement agencies. A summary report of these inspections is available on our website.

### Consumer Data Right

As the regulator for the privacy aspects of the CDR, s 56ER of the *Competition and Consumer Act 2010* authorises the OAIC to assess CDR participants to ensure they are handling CDR data in accordance with the privacy safeguards, or privacy- or confidentiality-related CDR Rules.

In 2021–22, we completed our first CDR assessment, which examined the 4 initial data holders' compliance with Privacy Safeguard 1, which relates to the open and transparent management of CDR data. For more information, see case study 4.1.1 on page 60.

We started our second and third CDR assessments in the reporting period and will finalise these in 2022–23. Both examine compliance with Privacy Safeguard 1 by accredited persons and further data holders.

**Table 4.1.1: Privacy assessments in 2021–22**

Privacy assessment subject	Number of entities assessed	Year opened	Date closed
COVIDSafe Assessment 3 – COVIDSafe application functionality, privacy policy and collection notices	1	2020–21	September 2021
CDR Assessment 1 – compliance of data holders with Privacy Safeguard 1	4	2020–21	October 2021
Section 309 inspections (Telecommunications Act, ss 306 and 306A obligations – Telstra	1	2020–21	February 2022
Section 309 inspections (Telecommunications Act), ss 306 and 306A obligations – Optus	1	2020–21	February 2022
Section 309 inspections (Telecommunications Act), ss 306 and 306A obligations – TPG	1	2020–21	February 2022
Section 309 inspections (Telecommunications Act), ss 306 and 306A obligations – Vodafone	1	2020–21	February 2022

Privacy assessment subject	Number of entities assessed	Year opened	Date closed
ACT Government – follow-up assessment of Housing ACT	1	2020–21	March 2022
COVIDSafe Assessment 4 – retention and deletion of COVID app data	1	2020–21	March 2022
COVIDSafe Assessment 2 – state and territory health authorities' access controls	8	2020–21	Ongoing
Privacy Impact Assessment Register Assessment Program – Australian Government Agencies Privacy Code s 15.1 compliance	169*	2020–21	Ongoing
CDR Assessment 2 – accredited data recipients' compliance with Privacy Safeguard 1	7	2021–22	Ongoing
Assessment of 300 general practice clinics – My Health Records Rule 2016 Rule 42 compliance	300	2020–21	Ongoing
Assessment of 20 general practice clinics – My Health Records Rule 2016 Rule 42 compliance	20	2021–22	Ongoing
CDR Assessment 3 – compliance of data holders with Privacy Safeguard 1	7	2021–22	Ongoing
Passenger name records assessment	1	2021–22	Ongoing
Digital Identity Assessment	1	2021–22	Ongoing

\* Number of entities is an estimate based on all Australian Government agencies covered by the Privacy Act.



### Case study 4.1.1: Privacy assessment of initial CDR data holders

In 2021–22, we assessed how the initial CDR data holders – ANZ Bank, Commonwealth Bank, NAB and Westpac – were complying with Privacy Safeguard 1. This requires providers to have a policy describing how they manage consumer data and to implement internal practices, procedures and systems to ensure compliance. Privacy Safeguard 1 is the bedrock CDR privacy safeguard that underpins compliance with all other privacy safeguards.

The assessment consisted of a desktop review of the banks' CDR policies, as well as related processes, practices and systems. It also included analysing questionnaires the banks completed about their compliance with Privacy Safeguard 1.

We found the banks were generally complying with the privacy safeguard and did not identify any high privacy risks. For each bank, we identified at least one medium privacy risk. One bank had 4 medium privacy risks, 2 banks had 3 and one bank had one medium privacy risk.

The majority of medium privacy risks related to the way the banks had implemented internal practices, procedures and systems to ensure compliance with their CDR obligations. We recommended action each bank should take to address the medium privacy risks. All banks accepted our recommendations.

The OAIC also suggested what each bank could do to improve its privacy compliance in relation to at least one area of low privacy risk. We identified 6 areas of low risk.

The recommendations and suggestions helped the 4 banks, as well as other CDR participants, to further embed, review and enhance their privacy practices and comply with the privacy safeguards.

We have used the findings of this assessment to inform updates to the CDR Privacy Safeguard Guidelines.

Responses reflected that the OAIC has a strong integrity culture and, although declining from previous years, our people have a strong individual drive to support our agency's objectives and work.

The OAIC scores were similar to comparable agencies in wellbeing policies and support, while our scores in employee engagement and innovation were marginally lower than similar agencies.

The challenging employment market and increased attrition rate are likely to have impacted the results, which were gathered during a period of significant change.

The OAIC has drafted a Census 2022 response plan and partnered with the Australian Public Service Commission's Centre of Excellence for Workforce Planning to identify opportunities to strengthen our results.

## Indicator 4.2: Improved employee engagement



### Measure

Positive rates against APS Employee Census (Strive, Stay, Say index)



### Target: Improvement on previous year (positive variance)

Not achieved

While levels of engagement remained strong, as shown in the OAIC's 2021 Australian Public Service (APS) Employee Census results, overall engagement was 70%, slightly lower than the previous year. The survey was completed by 75% of staff, slightly down on last year.

Among the census findings:

- 87% believe strongly in the purpose and objectives of the OAIC (down 4%).
- 87% are happy to go the 'extra mile' at work when required (down 9%).
- 64% approve of Senior Executive Service communications with other employees (up 15%).
- 64% believe staff are consulted about change at work (up 26%).

## Indicator 4.3: Increased staff retention



### Measure

Reduced staff turnover and increased internal mobility



### Target: Align with APS Employee Census rates for workforce mobility

Not achieved

Due to a highly competitive talent marketplace and recruitment challenges, our attrition rate increased to 35% in 2021–22, compared to the small agency average of 18%, according to APS employment data for 2021. It is also an increase on our 18% attrition rate in the previous period.

Our People and Culture function addressed this in 2021–22 by supporting the OAIC's move to a fully flexible hybrid working environment and providing strong learning and development opportunities, which will continue as a major focus in 2022–23. Mobility moves, consisting of internal branch transitions and transfers from other agencies, increased from 20 in the previous period to 25 as the OAIC provided more opportunities for secondment across agencies and built a strong interagency exchange network.

## Indicator 4.4: Mature the OAIC's data capability to understand and address emerging regulatory and enterprise risks



### Measure

The OAIC leverages data from business systems, complaints and media monitoring



### Target: Operational reporting received at each operations meeting informs regulatory approach

Achieved

In 2021–22, the OAIC maintained our reporting capability based on reports using the data from our case management system. Automated reports measuring performance against the OAIC Portfolio Budget Statement and corporate plan targets are provided to the OAIC Executive, Operations Committee and leadership group. The reports give management timely access to information, enable identification of emerging issues and risks, and assist with efficiency improvements.





# Part 3: Management and accountability

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## Corporate governance

Setting strategic direction, implementing and maintaining effective controls, policies and processes, and monitoring progress are key elements of our corporate governance framework.

### Enabling legislation

The Office of the Australian Information Commissioner (OAIC) was established in November 2010 as an independent statutory agency under the *Australian Information Commissioner Act 2010* (AIC Act).

The Australian Information Commissioner and Privacy Commissioner has a range of powers and responsibilities under the AIC Act, *Freedom of Information Act 1982* (FOI Act), *Privacy Act 1988* and other privacy-related legislation. The Freedom of Information (FOI) Commissioner exercises FOI functions.

We are accountable as a non-corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Our annual reporting responsibilities are under s 46 of the PGPA Act and s 30 of the AIC Act. We also have a range of reporting and other responsibilities under legislation generally applicable to Australian Government authorities.

### Portfolio structure and responsible minister

The OAIC is an independent statutory agency in the Attorney-General's portfolio. The minister responsible is the Honourable Mark Dreyfus KC MP.

### Executive

During the reporting period, our Executive team met weekly and oversaw all aspects of our business, including corporate management and performance, finance, human resources, governance, risk management, external engagement and business planning.

### Risk management

Risk management is an important part of our compliance with the PGPA Act and contributes to improved performance and sound governance.

The OAIC's approach to engaging with and managing risk is defined in our Risk Management Policy and Risk Management Framework and Guide. Our 2021 Risk Appetite Statement sets out our attitude towards risk and the amount and type of risk we are willing to accept to achieve our objectives.

We held a Senior Executive Service-level risk workshop in June 2022 to review our enterprise-level risks and reporting arrangements.

### Fraud

The OAIC's Fraud Policy and Guidelines and Fraud Control Plan and Risk Assessment were updated in August 2021 to reflect evolving policy requirements and contemporary practice regarding the management of fraud risks.

We engaged an external risk consultant in July to review our Fraud Control Framework in light of new fraud risks associated with the transition of our shared services in May 2022.

In May 2022, we delivered training for all staff on the Public Interest Disclosure Scheme, which included information on reporting fraudulent and corrupt conduct.

### Corporate services

In the reporting period, we transitioned our finance and human resources services from the Australian Human Rights Commission (AHRC) to the Service Delivery Office (SDO) within the Department of Finance, to align with the Australian Government's Shared Services Program. The SDO is a shared services hub provider for the Shared Services Program. We also transitioned our information and communication technology (ICT) services from the AHRC to the Department of Education, Skills and Employment (DESE).

Finance and human resources transactional services transitioned to the SDO on 16 May 2022 and finance services on 1 June 2022. To support the transactional services provided by the SDO, we strengthened our inhouse finance and human resources capabilities.

We transitioned our ICT, ICT security and ICT procurement services to DESE on 16 May 2022.

For more information, see Appendix D: Memorandums of understanding.

## Audit Committee

Our Audit Committee assists the Information Commissioner to discharge her responsibilities in relation to the OAIC's finances and performance, risk oversight and management, and system of internal

control. The Audit Committee charter is available on the OAIC website.

During the reporting period, the committee oversaw the work of our internal auditors and ensured we adhered to our annual work program. It also ensured appropriate coverage of our strategic and operational risks.

The committee meets quarterly and has an independent chair and 2 independent members. There were 3 independent members until we transitioned our shared services in May 2022, after which a representative of the AHRC no longer attended meetings. For more information on membership of the committee, see Table 3.1. Representatives from the Australian National Audit Office attend meetings of the Audit Committee as observers.

**Table 3.1: OAIC Audit Committee membership**

Member name	Qualifications, knowledge, skills or experience	Number of meetings attended	Total annual remuneration (GST included)
Anita Kauffmann	Ms Kauffmann is a chartered accountant with qualifications in governance and mediation. She is an experienced audit committee member, including as chair of the Civil Aviation Safety Authority's Board Audit and Risk Committee. Formerly a chartered accountant in public practice and recently chief financial officer of the University of New England, Ms Kauffmann has held numerous board, committee and executive roles in the education, aviation, sports administration, primary production and public policy sectors.	4	\$3,800
Josephine Schumann (Chair)	Ms Schumann is a former senior public servant with experience as the corporate executive general manager at the Australian Competition and Consumer Commission. She has extensive experience at the Senior Executive Service level within various Australian Government agencies and currently chairs audit committees for several agencies. Ms Schumann has strong public sector and regulatory experience, with her skillset including risk and organisational performance.	5	\$4,200
Peter Woods	Mr Woods is a consultant in ICT and corporate management. He has worked in a range of senior executive roles in government agencies, including as chief information officer at the Australian Competition and Consumer Commission and chief information officer and head of the Corporate Services Division at the Department of the Environment. He has extensive experience in the executive management of major ICT business solutions and procurement projects and has served on multiple boards.	5	\$4,180

## External scrutiny

During the reporting period, there were no judicial decisions or decisions of administrative tribunals that had a significant impact on our operations.

There were no reports on our operations by the Auditor-General, a parliamentary committee or the Commonwealth Ombudsman.

No capability reviews were released during the period.

### Federal Court applications relating to OAIC FOI regulatory activity

In 2021–22, 3 matters were the subject of judicial review.

The first related to a decision made under s 54W(b) of the FOI Act to decline to undertake an Information Commissioner review. This matter was discontinued by the Federal Court.

The second related to a decision made under s 89K to declare a person to be a vexatious applicant. That matter was dismissed without consideration of the merits by the Federal Court.

The third matter is an application under the *Administrative Decisions (Judicial Review) Act 1977*, which is currently on foot.

## Our people

Our people are the OAIC's most valuable resource. The achievement of our strategic priorities depends on our ability to attract, develop and retain highly engaged, skilled and professional people.

In 2021–22, we continued to support our people to deliver exceptional service and outcomes for the Australia community, government agencies and the wider industry in privacy and information management.

We broadened our recruitment approach to capture the best talent from across Australia, inviting applications from around the country to work with us in a hybrid work environment. Approximately one in 4 of our people are now based in a location other than Sydney, where our main office is located. Our hybrid work environment and our continued support of diversity and workplace flexibility formed part of our strategy to attract and retain the best talent.

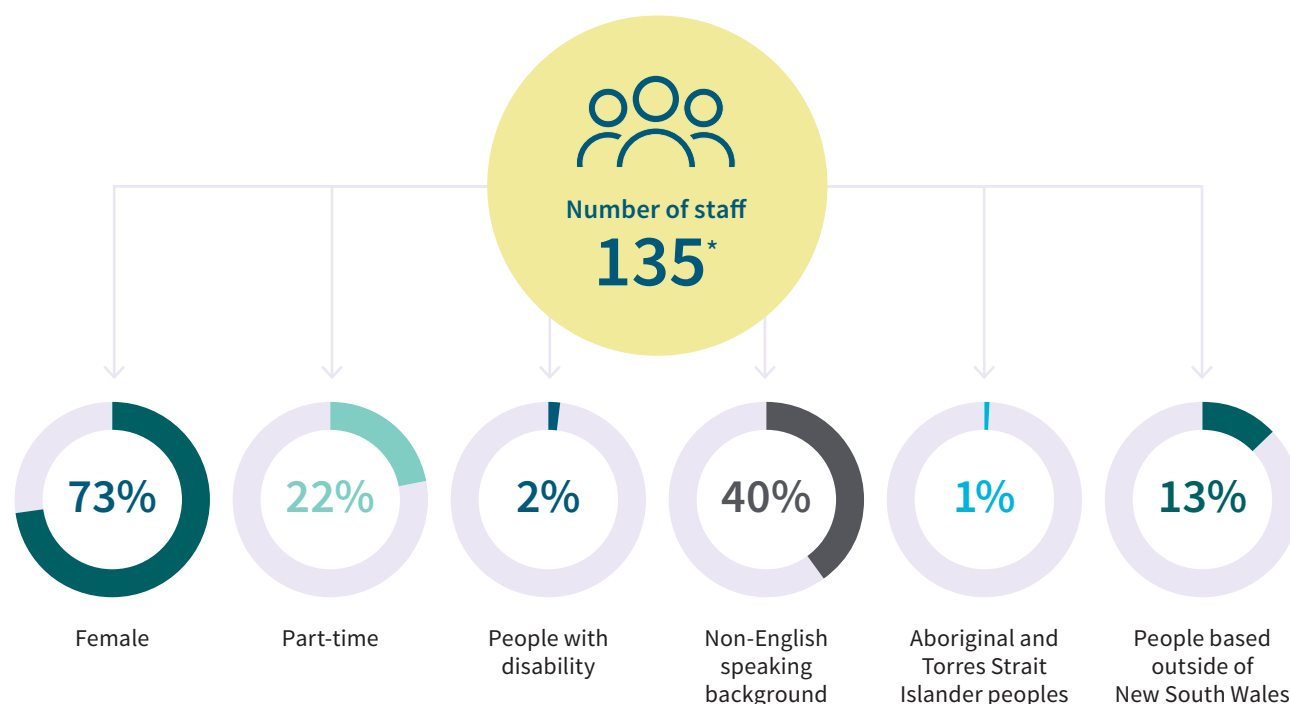
## Workforce statistics

During the reporting period, we had an average staffing level of 118. Our staff turnover was around 35% for ongoing staff. This involved 38 ongoing staff resigning, retiring or transferring to other Australian Government agencies. We conducted 24 recruitment processes and had 28 people join us in ongoing roles during 2021–22.

At 30 June 2022, we had 117 full time equivalent (FTE) staff, including in ongoing and non-ongoing roles.

For detailed workforce statistics, see Appendix C: Workforce statistics.

**Figure 3.1: OAIC workforce**



\* This reflects total head count and does not equate to the FTE total of 117.

## Hybrid work environment

We are building a future-ready and agile workforce in alignment with the *APS Workforce Strategy 2025*, ensuring we have the depth of knowledge, experience and ability to adapt to the changing environment. As part of this, and after significant consultation with our people, the OAIC has embraced hybrid work.

We consolidated our Sydney office space from 2 floors to one to support our ongoing hybrid work environment and broadened our recruitment approach to capture the best talent from across Australia. At 30 June 2022, we had 18 staff based outside New South Wales, spread across the Australian Capital Territory, Queensland, Victoria and Western Australia.

The transition to an ongoing hybrid work environment included providing all staff with laptops and improved ICT capabilities. This was accompanied by updated policies and procedures to ensure remote work was well supported and our people have appropriate and safe remote office set-ups.

We connected our people and delivered training and development opportunities using hybrid delivery methods to ensure inclusion, regardless of location, as well as facilitating informal social contact between staff.

## Learning and development

The OAIC continued to support and provide opportunities for our people to develop and learn. These opportunities focused on deepening the skills of our people in their areas of expertise and supporting their professional advancement.

Effective management is critical to maintaining the OAIC's accountability and integrity, and our ability to provide a safe workplace for our people. It ensures we have a culture that attracts and retains talent and a workforce that thrives. In 2021–22, we provided virtual and in-person training to all our managers to ensure they have the tools, skills and knowledge they need to enhance and support our people. This included 4 sessions provided as part of the 'Great Managers' course.

## Talking about performance

Our people participate in the performance management framework known as 'Talking about performance' (TAP). The TAP framework is intended to strengthen and support our people by providing regular and formal assessment of their work performance and identifying their learning and development needs. Staff and their supervisors set out performance expectations at the start of the cycle and engage in mid-cycle and end-of-cycle reviews.

We continue to consider new systems to best support ongoing and regular feedback and engagement with our people.

## Professional skills development

The People and Culture team worked in partnership with the Australian Public Service Commission, other agencies and specialised providers to provide training opportunities to our people.

As well as the management training previously mentioned, the OAIC provided courses such as plain English training for community-facing staff, and radical candour training for Executive Level (EL) 1 and 2 and Senior Executive Service (SES) level staff. Radical candour training promotes a culture of constructive feedback, open collaboration and learning.

As around 35% of our people are managers, there was also a strong focus on work health and safety training, to ensure managers are aware of their obligations and responsibilities under the *Work Health and Safety Act 2011* (WHS Act).

To best support learning and development, the OAIC will start using the LearnHub learning management system in 2022–23, with planning undertaken in the reporting period. This system will enable our people to complete required modules and participate in courses with those from other Australian Public Service (APS) agencies.

## Study and professional membership assistance

We encourage our people to undertake study to develop their knowledge and skills in relevant areas. Throughout 2021–22, we supported staff in meeting their learning and development needs through our study assistance program. We are proud of all those who undertook self-directed study towards doctorates, masters degrees and diploma-level qualifications.

We also contribute to the attainment of relevant professional memberships and certifications. This includes:

- lawyers' practising certificates
- Resolution Institute membership and National Mediator Accreditation System accreditation for conciliators
- International Association of Privacy Professionals membership.

## Workplace relations

The OAIC Enterprise Agreement (EA) nominally expired on 12 May 2022. Over 95% of staff voted in support of the Information Commissioner making a new 3-year remuneration determination, which provided a wage adjustment on 13 May 2022.

No staff received performance pay in 2021–22.

Eleven staff had an individual flexibility arrangement in place.

## Statutory office holder and SES remuneration

The Remuneration Tribunal determined the terms and conditions of our statutory office holders. Remuneration for SES officers is governed by determinations made by the Information Commissioner under s 24(1) of the *Public Service Act 1999*.

An acting FOI Commissioner was appointed in August 2021, while the formal recruitment process for the position was being finalised. In April 2022, Leo Hardiman PSM KC was appointed

as FOI Commissioner for a 5-year term. Australian Information Commissioner and Privacy Commissioner Angelene Falk was reappointed for a 3-year term in August 2021.

Determinations set out the salary of SES officers on commencement and provide for increments in salary based on performance. Over the course of 2021–22, the OAIC had 5 SES determinations in place that provided for general performance-based increments within existing salary structures.

For more information, see Appendix B: Executive remuneration.

## Benefits

We offer our people the following non-salary benefits:

- flexible working arrangements, including home-based work where appropriate
- an employee assistance program
- extended purchased leave
- maternity and adoption leave
- parental leave
- leave for compelling personal reasons and exceptional circumstances
- access to paid leave at half pay
- Flextime (APS staff) and time off in lieu (EL staff)
- study assistance
- support for professional and personal development
- healthy lifestyle reimbursement
- screen-based eyesight testing and screen-based prescription glasses reimbursements
- influenza vaccinations
- paid leave for COVID-19 vaccinations.

## OAIC committees

We have several committees that provide avenues for our people to get involved in the diverse activities and decisions of the OAIC.



## Moving on Up Committee

The OAIC established the Moving on Up Committee for the consolidation of our Sydney office space and move to permanent hybrid work. The committee provided a vehicle for staff communication and consultation and advised the Executive on issues and key decisions.

## OAIC Consultation Forum

The OAIC Consultation Forum (OCF) is a platform for consultation between the OAIC and staff. The OCF meets twice a year and out of session when required. It considers issues relating to the implementation of the EA, policies and guidelines relating to working arrangements and other matters that affect staff working arrangements.

In 2021–22, the OCF met 5 times, including 3 additional meetings called in collaboration with other key OAIC committees to discuss returning to work in the COVID-19 environment and the OAIC's transition to a hybrid working model.

OCF members participated in the Moving on Up Committee to assist in consolidating our Sydney office space and ensure that staff views and preferences were considered through targeted consultation.

The OCF helped update policies, including the Workplace Harassment Policy, Managing Conflicts of Interest Policy and Home-based Work Policy. It also provided feedback from staff on the OAIC's EA.

## OAIC Diversity Committee

The OAIC is committed to creating a working environment that values and uses the contribution of staff with diverse backgrounds and experiences. We celebrate the diversity of our people as one of our greatest assets in meeting our organisational objectives. The OAIC Diversity Committee (ODC) is led by the assistant commissioner corporate and includes representatives from all OAIC branches.

During the reporting period, the OAIC participated in events in keeping with our supportive workplace focus, including Harmony Week, International Day of People with Disability, International Women's Day, Lunar New Year, NAIDOC Week, National Reconciliation Week, R U OK? Day, the Sydney Gay and Lesbian Mardi Gras Parade, and Wear It Purple Day.

A highlight of the ODC's work in 2021–22 was planning for NAIDOC Week 2022 on 3 to 10 July. The ODC established a NAIDOC Week subcommittee for this purpose. Activities included engagement with the Metropolitan Local Aboriginal Land Council, the development of a guide to delivering an Acknowledgement of Country to embed this practice in all OAIC meetings, and planning of a Welcome to Country and a cultural awareness yarn.

## OAIC Health, Safety and Wellbeing Committee

As an employer, the OAIC has obligations under the WHS Act to provide a safe workplace for all staff. One way we do this is by carrying out regular workplace inspections to identify, manage and minimise health and safety risks as far as is reasonably practicable.

This was the first full year of operation for our standalone Health, Safety and Wellbeing Committee. We ran our first Hazard Inspection Program in the reporting period, with no significant findings reported.

The OAIC is committed to ensuring we provide a safe and healthy workplace by:

- providing and maintaining a healthy and safe physical working environment
- providing financial and other resources to ensure that necessary work health and safety programs and activities are established and maintained
- providing access to a dedicated employee assistance provider for staff counselling
- providing a forum for consultation and cooperation on work health and safety matters
- implementing policies, guidelines and health and safety arrangements on a range of relevant matters
- appointing health and safety representatives for the agency.

## Procurement

During this reporting period, we complied with the Australian Government's procurement policy framework. We encouraged competition, value for money, transparency and accountability.

All procurement was conducted in line with the Commonwealth Procurement Rules to ensure the efficient, effective, economical and ethical use of Australian Government resources.

During the reporting period, 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.

## Consultants

### Consultancy and non-consultancy contract expenditure reporting

This report contains information about actual expenditure on reportable consultancy and non-consultancy contracts. Information on the value of such contracts is available on the AusTender website.

Decisions to engage consultants during 2021–22 were made in accordance with the PGPA Act and related regulations, including the Commonwealth Procurement Rules and relevant internal policies.

The OAIC selects consultants through panel arrangements or by making limited and open approaches to market.

We engaged consultants where we lacked specialist expertise or when independent research, review or assessment was required. Typically, we engaged consultants to:

- carry out defined reviews or evaluations
- provide independent advice, information or creative solutions to assist with our decision making.

During 2021–22, 2 new reportable consultancy contracts involving total actual expenditure of \$180,100 were entered. In addition, 5 ongoing reportable consultancy contracts were active during the period, involving total actual expenditure of \$65,765.

The OAIC entered into 29 new reportable non-consultancy contracts involving actual expenditure of \$3,130,067. In addition, 8 ongoing reportable non-consultancy contracts were active during the period, involving total actual expenditure of \$131,435.

**Table 3.1: Expenditure on reportable consultancy contracts**

Reportable consultancy contracts 2021–22	Number	Expenditure \$'000 (GST inc.)
New contracts entered into during the reporting period	2	180
Ongoing contracts entered into during a previous reporting period	5	66
<b>Total</b>	<b>7</b>	<b>246</b>

**Table 3.2: Expenditure on reportable non-consultancy contracts**

Reportable non-consultancy contracts 2021–22	Number	Expenditure \$'000 (GST inc.)
New contracts entered into during the reporting period	29	3,130
Ongoing contracts entered into during a previous reporting period	8	131
<b>Total</b>	<b>37</b>	<b>3,261</b>

**Table 3.3: Organisations receiving 5 largest shares of reportable consultancy contract expenditure**

Name of organisation	Expenditure \$'000 (GST inc.)
KPMG (ABN 51 194 660 183)	180
Ruth Mackay and Associates (ABN 19 463 597 314)	32
Information Integrity Solutions Pty Ltd (ABN 78 107 611 898)	16
Little Owl (ABN 50 635 882 487)	10
PricewaterhouseCoopers (ABN 52 780 433 757)	4

**Table 3.4: Organisations receiving 5 largest shares of reportable non-consultancy contract expenditure**

Name of organisation	Expenditure \$'000 (GST inc.)
Department of Finance (ABN 61 970 632 495)	1,238
Department of Education, Skills and Employment (ABN 12 862 898 150)	1,039
Sparke Helmore Lawyers (ABN 78 848 387 938)	206
Cypha Interactive Pty Limited (ABN 26 161 735 833)	201
Squiz Pty Ltd (ABN 53 131 581 247)	123

## Small business

We supported small business participation in the Australian Government procurement market and engaged with small businesses wherever appropriate during our work. Small and medium enterprises and small enterprise participation statistics are available

on the Department of Finance's website. We also recognised the importance of ensuring that small businesses were paid on time. Our statistics are available in the results of the Survey of Australian Government Payments to Small Business, which are available on The Treasury's website.

## Other requirements

### Advertising and market research

The OAIC did not conduct advertising or market research in the reporting period.

### Disability reporting

*Australia's Disability Strategy 2021–2031* is the overarching framework for inclusive policies, programs and infrastructure that will support people with disability to participate in all areas of Australian life.

The strategy sets out where practical changes will be made to improve the lives of people with disability. It is intended to ensure the principles underpinning the United Nations Convention on the Rights of Persons with Disabilities are incorporated into Australian policies and programs that affect people with disability, their families and carers.

All levels of government have committed to deliver more comprehensive and visible reporting under the strategy. A range of reports on progress of the strategy's actions and outcome areas will be published and available at [disabilitygateway.gov.au/ads](https://disabilitygateway.gov.au/ads).

The OAIC is committed to inclusion and reducing barriers for current and future staff with disability.

At 30 June 2022, 2% of the OAIC's workforce identified as a person with disability.

### Ecologically sustainable development and environment performance

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

### Grants

The OAIC did not award any grants in 2021–22.

### Information Publication Scheme

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

### Memorandums of understanding

We received funding for specific services under a range of memorandums of understanding. For more information, see Appendix D.





## Part 4: Financial statements

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## INDEPENDENT AUDITOR'S REPORT

### To the Attorney-General

#### Opinion

In my opinion, the financial statements of the Office of the Australian Information Commissioner (the Entity) for the year ended 30 June 2022:

- (a) comply with Australian Accounting Standards – Simplified Disclosures and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Entity as at 30 June 2022 and its financial performance and cash flows for the year then ended.

The financial statements of the Entity, which I have audited, comprise the following as at 30 June 2022 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial 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 Entity 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 (including Independence Standards)* (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 Entity, the Australian Information Commissioner (the Commissioner) is responsible under the *Public Governance, Performance and Accountability Act 2013* (the Act) for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Simplified Disclosures and the rules made under the Act. The Commissioner is also responsible for such internal control as the Commissioner determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Commissioner is responsible for assessing the ability of the Entity 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 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 the Accountable Authority 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

A handwritten signature in dark ink that reads "S Bond." The signature is written in a cursive, slightly informal style.

Sally Bond

Executive Director

Delegate of the Auditor-General

Canberra

27 September 2022

## Statement by the accountable authority and chief financial officer

In our opinion, the attached financial statements for the year ended 30 June 2022 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 entity will be able to pay its debts as and when they fall due.



**Angelene Falk**  
Australian Information Commissioner  
27 September 2022



**Brenton Attard**  
Chief Financial Officer  
27 September 2022

# Statement of comprehensive income

for the period ended 30 June 2022

		30 June 2022	30 June 2021	Original budget
	Notes	\$'000	\$'000	\$'000
<b>NET COST OF SERVICES</b>				
<b>Expenses</b>				
Employee benefits	1.1A	<b>16,493</b>	16,982	17,999
Suppliers	1.1B	<b>8,925</b>	6,799	6,585
Depreciation and amortisation	2.2A	<b>1,998</b>	2,650	1,224
Finance costs	1.1C	<b>20</b>	9	20
Write-down and impairment of other assets	1.1D	<b>32</b>	–	–
<b>Total expenses</b>		<b>27,468</b>	26,439	25,828
<b>Own-source revenue</b>				
Revenue from contracts with customers	1.2A	<b>186</b>	2,323	150
Other revenue	1.2B	<b>36</b>	36	–
<b>Total own-source revenue</b>		<b>222</b>	2,359	150
<b>Gains</b>				
Other gains	1.2C	–	4	33
<b>Total gains</b>		–	4	33
<b>Total own-source income</b>		<b>222</b>	2,363	183
<b>Net (cost of) services</b>		<b>(27,246)</b>	(24,076)	(25,645)
Revenue from Government	1.2D	<b>26,730</b>	20,948	25,283
<b>Surplus/(deficit) before income tax on continuing operations</b>		(516)	(3,128)	(362)
<b>Surplus/(deficit) after income tax on continuing operations</b>		(516)	(3,128)	(362)

		30 June 2022	30 June 2021	Original budget
	Notes	\$'000	\$'000	\$'000
<b>OTHER COMPREHENSIVE INCOME</b>				
<b>Items not subject to subsequent reclassification to net cost of services</b>				
Changes in asset revaluation reserve		100	298	–
<b>Total comprehensive surplus/(deficit)</b>		<b>(416)</b>	<b>(2,830)</b>	<b>(362)</b>

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

### Budget variances commentary

The OAIC recorded a deficit from operations for the financial year ended 30 June 2022 of \$516,000 compared to an original budgeted deficit of \$362,000.

This variance is driven across most areas of expenditure and revenue, specifically:

- **Employee benefits** – During the reporting period, the OAIC incurred lower than anticipated employee benefit costs due to an increased attrition rate driven by an extremely competitive labour market. This same competitive market also made it difficult to recruit to replace the vacant positions. This has also reflected in the performance of the OAIC against agreed KPIs for the same period.
- **Suppliers** – The decrease in employee costs was partially offset by an increase in supplier expenses due to the need to replace some of the lost staff capacity with contractors to maintain activity levels in the absence of recruitable staff. The other significant variations relate to the transition/transformation project noted in the overview and telecommunication costs. The increase to telecommunication costs included increased ICT network costs to support the Consumer Data Right portal, the website migration project and expanded bandwidth to initially enable remote work during the COVID-19 pandemic, but which will now be a part of the support for the new hybrid working model.
- **Depreciation/amortisation** – The changes to the OAIC's office leases connected to the floor relocation mentioned in the overview resulted in a larger than budget depreciation of the leasehold improvements related to those changes. The balance of the adjustment to this balance was connected to the increase in intangibles related to the redevelopment of the OAIC website.
- **Revenue from the Australian Government** – The OAIC received additional revenue appropriations of \$1,447,000 as a part of the 2022 Additional Estimates, which were to cover the transition/transformation project costs and ongoing litigation.

# Statement of financial position

as at 30 June 2022

		30 June 2022	Restated 30 June 2021 <sup>1</sup>	Original budget
	Notes	\$'000	\$'000	\$'000
<b>ASSETS</b>				
<b>Financial assets</b>				
Cash and cash equivalents	2.1A	<b>2,931</b>	1,839	1,453
Trade and other receivables	2.1B	<b>2,871</b>	2,998	4,924
<b>Total financial assets</b>		<b>5,802</b>	4,837	6,377
<b>Non-financial assets<sup>2</sup></b>				
Property lease	2.2A	<b>3,505</b>	4,440	3,517
Infrastructure, plant and equipment	2.2A	<b>1,515</b>	1,545	2,110
Intangibles	2.2A	<b>577</b>	621	369
Other non-financial assets	2.2B	<b>114</b>	172	526
<b>Total non-financial assets</b>		<b>5,711</b>	6,778	6,522
<b>Total assets</b>		<b>11,513</b>	11,615	12,899
<b>LIABILITIES</b>				
<b>Payables</b>				
Suppliers	2.3A	<b>1,621</b>	1,351	2,689
Other payables	2.3B	<b>387</b>	309	823
<b>Total payables</b>		<b>2,008</b>	1,660	3,512
<b>Interest bearing liabilities</b>				
Leases	2.4A	<b>3,594</b>	4,456	3,634
<b>Total interest bearing liabilities</b>		<b>3,594</b>	4,456	3,634



		30 June 2022	Restated 30 June 2021 <sup>1</sup>	Original budget
	Notes	\$'000	\$'000	\$'000
<b>Provisions</b>				
Employee provisions	4.1A	<b>3,692</b>	3,412	2,949
<b>Total provisions</b>		<b>3,692</b>	3,412	2,949
<b>Total liabilities</b>		<b>9,294</b>	9,528	10,095
<b>Net assets</b>		<b>2,219</b>	2,086	2,804
<b>EQUITY</b>				
Contributed equity		<b>5,423</b>	4,873	4,873
Reserves		<b>606</b>	506	207
Retained surplus/(accumulated deficit)		<b>(3,810)</b>	(3,294)	(2,276)
<b>Total equity</b>		<b>2,219</b>	2,086	2,804

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

<sup>1</sup> Refer to Overview.

<sup>2</sup> Right-of-use assets are included in the property lease line item.

### Budget variances commentary

#### Assets

The majority of the budget variances in the assets are timing related. Changes in the OAIC reflected in the assets are centred around non-financial assets. This net reduction is driven by a reduction in infrastructure, plant and equipment arising from the relocation to a single floor and the related depreciation on leasehold improvements and redundant assets, partially offset by acquisition of new computer hardware associated with the transition of ICT service provider and work related to the development of a new OAIC website.

#### Liabilities

The budget variances in liabilities are driven from a combination of timing around payables, a lower level of leave utilisation and adjustments to leave parameters impacting on employee provisions and the adjustment of unearned income against the prior year position.

#### Equity

The variance to budget in equity is primarily driven by the 2022 original budget being prepared prior to the finalisation of the 2021 financial statements and therefore not reflecting the final higher deficit position net of the higher asset revaluation reserve for 2021. This is partially offset by the equity injection as a part of the additional equity funding during the 2022 Additional Estimates (not budgeted in the original budget) and the impact of the adjustment of the unearned revenue balance adding to prior year opening retained earnings.

# Statement of changes in equity

for the period ended 30 June 2022

		30 June 2022	Restated 30 June 2021 <sup>1</sup>	Original budget
	Notes	\$'000	\$'000	\$'000
<b>CONTRIBUTED EQUITY</b>				
<b>Opening balance</b>				
Balance carried forward from previous period		4,873	4,873	4,873
<b>Adjusted opening balance</b>		4,873	4,873	4,873
<b>Contributions by owners</b>				
Equity injection – appropriations		550	–	–
<b>Total transactions with owners</b>		550	–	–
<b>Closing balance as at 30 June</b>		5,423	4,873	4,873
<b>RETAINED EARNINGS</b>				
<b>Opening balance</b>				
Balance carried forward from previous period		(3,294)	(782)	(1,914)
Correction of prior year error for revenue received in advance <sup>1</sup>		–	616	–
<b>Adjusted opening balance</b>		(3,294)	(166)	(1,914)
<b>Comprehensive income</b>				
Surplus/(deficit) for the period		(516)	(3,128)	(362)
<b>Total comprehensive income</b>		(516)	(3,128)	(362)
<b>Closing balance as at 30 June</b>		(3,810)	(3,294)	(2,276)
<b>ASSET REVALUATION RESERVE</b>				
<b>Opening balance</b>				
Balance carried forward from previous period		506	208	207
<b>Adjusted opening balance</b>		506	208	207

		30 June 2022	Restated 30 June 2021 <sup>1</sup>	Original budget
	Notes	\$'000	\$'000	\$'000
<b>Comprehensive income</b>				
Other comprehensive income		100	298	–
<b>Total comprehensive income</b>		100	298	–
<b>Closing balance as at 30 June</b>		606	506	207
<b>TOTAL EQUITY</b>				
<b>Opening balance</b>				
Balance carried forward from previous period		2,085	4,299	3,166
Correction of prior year error for revenue received in advance <sup>1</sup>		–	616	–
<b>Adjusted opening balance</b>		2,085	4,915	3,166
<b>Comprehensive income</b>				
Surplus/(deficit) for the period		(516)	(3,128)	(362)
Other comprehensive income		100	298	–
<b>Total comprehensive income</b>		(416)	(2,830)	(362)
<b>Transactions with owners</b>				
<b>Contributions by owners</b>				
Equity injection – appropriations		550	–	–
<b>Total transactions with owners</b>		550	–	–
<b>Closing balance as at 30 June</b>		2,219	2,085	2,804

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

<sup>1</sup> Refer to Overview.

### Accounting policy

#### *Equity injections*

Amounts appropriated that are designated as 'equity injections' for a year (less any formal reductions) and departmental capital budgets are recognised directly in contributed equity in that year.

### Budget variances commentary

The variance to budget in equity is primarily driven by the 2022 original budget being prepared prior to the finalisation of the 2021 financial statements and therefore not reflecting the final higher deficit position net of the higher asset revaluation reserve for 2021. This is partially offset by the equity injection as a part of the additional equity funding during the 2022 Additional Estimates (not budgeted in the original budget) and the impact of the adjustment of the unearned revenue balance adding to prior year opening retained earnings.

# Cash flow statement

for the period ended 30 June 2022

		30 June 2022	30 June 2021	Original budget
	Notes	\$'000	\$'000	\$'000
<b>OPERATING ACTIVITIES</b>				
<b>Cash received</b>				
Appropriations		27,903	24,073	25,302
Receipts from Government		–	–	–
Sale of goods and rendering of services		622	1,949	142
GST received		781	849	8
<b>Total cash received</b>		<b>29,306</b>	26,871	25,452
<b>Cash used</b>				
Employees		(16,410)	(16,466)	(17,999)
Suppliers		(10,133)	(7,428)	(6,302)
Interest payments on lease liabilities		(20)	(9)	(20)
GST paid		–	–	(250)
Section 74 receipts transferred to OPA		(533)	(2,423)	–
<b>Total cash used</b>		<b>(27,096)</b>	(26,326)	(24,571)
<b>Net cash from/(used by) operating activities</b>		<b>2,210</b>	545	881
<b>INVESTING ACTIVITIES</b>				
<b>Cash used</b>				
Purchase of property, plant and equipment		–	(372)	–
Purchase of intangibles		(256)	(128)	(409)
<b>Total cash used</b>		<b>(256)</b>	(500)	(409)
<b>Net cash from/(used by) investing activities</b>		<b>(256)</b>	(500)	(409)

		30 June 2022	30 June 2021	Original budget
	Notes	\$'000	\$'000	\$'000
<b>FINANCING ACTIVITIES</b>				
<b>Cash used</b>				
Principal payments of lease liabilities		(862)	(1,796)	(862)
<b>Total cash used</b>		(862)	(1,796)	(862)
<b>Net cash from/(used by) financing activities</b>		(862)	(1,796)	(862)
<b>Net increase/(decrease) in cash held</b>		<b>1,092</b>	(1,751)	(390)
Cash and cash equivalents at the beginning of the reporting period		<b>1,839</b>	3,590	1,843
<b>Cash and cash equivalents at the end of the reporting period</b>	2.1A	<b>2,931</b>	1,839	1,453

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

#### Budget variances commentary

The operating cash flow variance to budget arises from the higher than anticipated cash flows connected to extra appropriations funded during 2022 Additional Estimates combined with leave liability transfers for new starters transferred within government, offset by higher than budgeted payments surrounding the transition project mentioned in the overview, which was connected to the requested operating loss.

The other movements reflect the budget variations noted for the Statement of comprehensive income.

## Overview

### Objectives of the OAIC

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

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 OAIC originally budgeted for a breakeven result (after adjustment for depreciation/amortisation funded through revenue appropriations of \$289,000, depreciation/amortisation of right of use (ROU) of \$935,000 and principal repayments on leased assets of \$862,000) for the year ended 30 June 2022.

At the time of the 2022 budget process, there was planning underway for a number of changes that would have a significant impact on the OAIC, including:

- the transfer of shared services to a new provider
- the required establishment of inhouse finance and people and culture teams
- the transition of human resources, payroll and finance operations to a new enterprise resource planning system
- the transition to a new ICT provider
- restructuring the office accommodation in Sydney from 2 floors to one floor under a hybrid working model.

While an estimate for these changes was made at the budget, the specification of the changes and the detail of the project was still to be finalised. Early into the 2022 financial year the specifications were clarified and

the final quotes obtained resulting in higher costs than originally anticipated. As a result of these changes, the OAIC applied for and had approved an operating loss for the 2022 year of \$1,630,000 (after adjustment for depreciation/amortisation funded through revenue appropriations of \$289,000, depreciation/amortisation of ROU of \$935,000 and principal repayments on leased assets of \$862,000).

The actual result for the year ended 30 June 2022 is a surplus of \$622,000 (after adjustment for depreciation/amortisation funded through revenue appropriations of \$1,063,000, depreciation/amortisation of ROU of \$935,000 and principal repayments on leased assets of \$862,000).

### Basis of preparation

The financial statements are required by section 42 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

The financial statements have been prepared in accordance with the:

- a. Public Governance, Performance and Accountability (Financial Reporting) Rule 2015 (FRR)
- b. Australian Accounting Standards and Interpretations – including simplified disclosures for Tier 2 Entities under AASB 1060 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.



## Correction of prior year error for revenue received in advance

The amount of revenue received in advance of \$616,000 included in other payables under payables as at 30 June 2021 represented the estimate for unspent funds related to a number of memorandums of understanding (MOU). This balance was unchanged from 30 June 2020. Upon review of the MOUs, it was determined that this amount should have had a balance as at 30 June 2020 and 30 June 2021 of \$Nil.

A correction has been posted for an amount of \$616,000 as a part of the preparation of the financial statements for the year ended 30 June 2022. The impact of this correction has been that the 2021 balance of revenue received in advance has been taken to a zero balance as at 30 June 2020 with this reduction being accounted for through an adjustment to the opening balance of retained earnings as at 30 June 2020 in the comparative figures in the 30 June 2022 financial statements. This adjustment has reduced other payables by \$616,000 and therefore total payables and total liabilities, while also increasing net assets in the 2021 comparatives. The prior year increase in net assets has flowed into the current financial year. There has been no adjustment to the surplus/(deficit) for the period in either of the financial years ended 30 June 2021 nor 30 June 2022.

## New accounting standards

No accounting standard has been adopted earlier than the application date as stated in the standard.

The following new standards, which were issued prior to the signing of the statement by the accountable authority and chief financial officer, are applicable to the current reporting period and had no material effect on OAIC financial statements:

Standard/ interpretation	Nature of change in accounting policy, transitional provisions and adjustment to financial statements
AASB 1060 General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities	AASB 1060 applies to annual reporting periods beginning on or after 1 July 2021 and replaces the reduced disclosure requirements (RDR) framework. The application of AASB 1060 involves some reduction in disclosure compared to the RDR with no impact on the reported financial position, financial performance and cash flows of the entity.

## Taxation

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

## Events after the reporting period

There are no known events after the reporting period that could have a material impact on the financial statements.

# Financial performance

This section analyses the financial performance of the OAIC for the year ended 2022.

## 1.1: Expenses

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>1.1A: Employee benefits</b>		
Wages and salaries	<b>13,220</b>	13,208
Superannuation		
Defined contribution plans	<b>2,076</b>	1,645
Defined benefit plans	<b>62</b>	445
Leave and other entitlements	<b>1,100</b>	1,558
Separation and redundancies	<b>1</b>	–
Other employee expenses	<b>34</b>	126
<b>Total employee benefits</b>	<b>16,493</b>	16,982

### Accounting policy

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

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>1.1B: Suppliers</b>		
<b>Goods and services supplied or rendered</b>		
Consultants	126	–
Contractors	106	–
Insurance	6	–
Office consumables	20	51
Travel	34	69
Printing and publications	–	4
Property outgoing	581	561
Professional services and fees	4,816	5,156
Reference materials, subscriptions and licences	80	236
Staff training	163	213
Telecommunication	577	49
Project cost	1,166	–
Other	42	230
<b>Total goods and services supplied or rendered</b>	<b>7,717</b>	<b>6,569</b>
Goods supplied	100	55
Services rendered	7,617	6,515
<b>Total goods and services supplied or rendered</b>	<b>7,717</b>	<b>6,570</b>
<b>Other suppliers</b>		
Workers compensation expenses	62	59
Short-term leases <sup>1</sup>	1,005	15
Low-value leases	141	155
<b>Total other suppliers</b>	<b>1,208</b>	<b>229</b>
<b>Total suppliers</b>	<b>8,925</b>	<b>6,798</b>

<sup>1</sup> The OAIC has one short-term lease commitment of \$0.52 million as at 30 June 2022 located at Ground Floor, 4 National Circuit, Barton ACT 2600, which is on a monthly basis. The OAIC previously held a lease at Level 2, 175 Pitt Street, Sydney NSW 2000, which concluded on 30 June 2022.

**Accounting policy***Short-term leases and leases of low-value assets*

The OAIC has elected not to recognise right-of-use assets and lease liabilities for short-term leases of assets that have a lease term of 12 months or less and leases of low-value assets (less than \$10,000). The OAIC recognises the lease payments associated with these leases as an expense on a straight-line basis over the lease term.

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>1.1C: Finance costs</b>		
Interest on lease liabilities	20	9
<b>Total finance costs</b>	20	9

The above lease disclosure should be read in conjunction with the accompanying notes 2.2 and 2.4A.

**Accounting policy**

All borrowing costs are expensed as incurred.

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>1.1D: Write-down and impairment of other assets</b>		
Write-down of property, plant and equipment	32	–
<b>Total write-down and impairment of other assets</b>	32	–

## 1.2: Own source revenue and gains

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>Own-source revenue</b>		
<b>1.2A: Revenue from contracts with customers</b>		
Rendering of services	186	2,323

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>Total revenue from contracts with customers</b>	<b>186</b>	2,323
<b>Disaggregation of revenue from contracts with customers</b>		
Major product / service line:		
Regulatory services	<b>186</b>	2,323
	<b>186</b>	2,323
Type of customer:		
Australian Government entities (related parties)	<b>1</b>	2,139
State and territory governments	<b>178</b>	184
Non-government entities	<b>7</b>	–
	<b>186</b>	2,323
Timing of transfer of goods and services:		
Over time	<b>186</b>	2,323
	<b>186</b>	2,323

### Accounting policy

#### *Revenue from rendering services*

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 the end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>1.2B: Other revenue</b>		
Resources received free of charge		
Remuneration of auditors	<b>36</b>	36
<b>Total other revenue</b>	<b>36</b>	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.

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>1.2C: Other gains</b>		
Sale of assets	–	4
<b>Total other gains</b>	–	4

**Accounting policy***Sale of assets*

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

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>1.2D: Revenue from government</b>		
Appropriations		
Departmental appropriations	<b>26,730</b>	20,948
<b>Total revenue from government</b>	<b>26,730</b>	20,948

**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 OAIC'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

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>2.1A: Cash and cash equivalents</b>		
Cash on hand or on deposit	<b>2,931</b>	1,839
<b>Total cash and cash equivalents</b>	<b>2,931</b>	1,839

#### Accounting policy

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

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>2.1B: Trade and other receivables</b>		
<b>Goods and services receivables</b>		
Goods and services	–	62
<b>Total goods and services receivables</b>	–	62
<b>Appropriation receivables</b>		
Appropriation receivable	<b>2,737</b>	2,795
<b>Total appropriation receivables</b>	<b>2,737</b>	2,795
<b>Other receivables</b>		
GST receivable	<b>134</b>	141
<b>Total other receivables</b>	<b>134</b>	141
<b>Total trade and other receivables (gross)</b>	<b>2,871</b>	2,998
Less impairment loss allowance	–	–
<b>Total trade and other receivables (net)</b>	<b>2,871</b>	2,998

Credit terms for goods and services were within 30 days (2021: 30 days).

#### 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 property, plant and equipment and intangibles for 2022

	Property lease	Lease improvements	Lease improvements work in progress	Computers, plant and equipment	Computers, plant and equipment work in progress	Intangibles work in progress	Total
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>As at 1 July 2021 represented by</b>							
Gross book value	7,864	1,490	-	24	31	56	12,725
Accumulated depreciation, amortisation and impairment	(3,424)	-	-	-	-	-	(6,119)
<b>Total as at 1 July 2021</b>	<b>4,440</b>	<b>1,490</b>	<b>-</b>	<b>24</b>	<b>31</b>	<b>56</b>	<b>6,606</b>
Additions							
Purchase or internally developed	-	-	-	652	-	256	908
Work in progress transfer	-	-	-	31	(31)	(71)	-
Revaluations and impairments recognised in other comprehensive income	-	91	-	9	-	-	100
Depreciation and amortisation	-	(710)	-	(40)	-	-	(1,063)
Depreciation on right-of-use assets	(935)	-	-	-	-	-	(935)

	Property lease	Lease improvements	Lease improvements work in progress	Computers, plant and equipment	Computers, plant and equipment work in progress	Intangibles	Intangibles work in progress	Total
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Other movements	-	-	-	-	-	13	-	13
Disposals	-	(8)	-	(24)	-	-	-	(32)
<b>Total as at 30 June 2022</b>	<b>3,505</b>	<b>863</b>	<b>-</b>	<b>652</b>	<b>-</b>	<b>336</b>	<b>241</b>	<b>5,597</b>
<b>As at 30 June 2022 represented by</b>								
Gross book value	<b>4,673</b>	<b>1,340</b>	<b>-</b>	<b>672</b>	<b>-</b>	<b>2,293</b>	<b>241</b>	<b>9,217</b>
Accumulated depreciation, amortisation and impairment	<b>(1,168)</b>	<b>(477)</b>	<b>-</b>	<b>(20)</b>	<b>-</b>	<b>(1,957)</b>	<b>-</b>	<b>(3,622)</b>
<b>Total as at 30 June 2022</b>	<b>3,505</b>	<b>863</b>	<b>-</b>	<b>652</b>	<b>-</b>	<b>336</b>	<b>241</b>	<b>5,595</b>
Carrying amount of right-of- use assets	<b>3,505</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>3,505</b>

- The above right-of-use assets disclosure should be read in conjunction with the accompanying notes 1.1C and 2.4A.
- No indicator of impairment found for property, plant and equipment, and intangibles.
- No property, plant and equipment and intangibles are expected to be sold or disposed of within the next 12 months.
- All revaluations were conducted by an independent valuer on 30 June 2022 in accordance with the revaluation policy stated at Note 2.2.

# Reconciliation of the opening and closing balances of property, plant and equipment and intangibles for 2021

	Property lease	Lease improvements	Lease improvements work in progress	Computers, plant and equipment	Computers, plant and equipment work in progress	Intangibles work in progress	Total
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>As at 1 July 2020</b>							
Gross book value	3,227	1,498	42	33	–	158	7,988
Accumulated depreciation, amortisation and impairment	(1,676)	–	–	–	–	(2,492)	(4,168)
<b>Total as at 1 July 2020</b>	<b>1,551</b>	<b>1,498</b>	<b>42</b>	<b>33</b>	<b>–</b>	<b>158</b>	<b>3,820</b>
Additions							
Purchase	–	–	341	–	31	128	500
Work in progress transfer	–	383	(383)	–	–	(230)	–
Right-of-use assets	4,672	–	–	–	–	–	4,672
Revaluations and impairments recognised in other comprehensive income	–	285	–	13	–	–	298
Depreciation and amortisation	(1,748)	(676)	–	(22)	–	–	(2,649)
Other movements	(35)	–	–	–	–	–	(35)
<b>Total as at 30 June 2021</b>	<b>4,440</b>	<b>1,490</b>	<b>–</b>	<b>24</b>	<b>31</b>	<b>56</b>	<b>6,605</b>
<b>As at 30 June 2021 represented by</b>							
Gross book value	7,864	1,490	–	24	31	56	12,725
Accumulated depreciation, amortisation and impairment	(3,424)	–	–	–	–	–	(6,119)
<b>Total as at 30 June 2021</b>	<b>4,440</b>	<b>1,490</b>	<b>–</b>	<b>24</b>	<b>31</b>	<b>56</b>	<b>6,605</b>
Carrying amount of right-of- use assets	4,440	–	–	–	–	–	4,440

### 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. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

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 the 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 property, 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).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions in property leases taken up by the entity where there exists an obligation to restore the property to its original condition. These costs are included in the value of the OAIC's leasehold improvements with a corresponding provision for the 'make good' recognised.

#### *Leased right of use assets*

Leased ROU assets are capitalised at the commencement date of the lease and comprise of the initial lease liability amount, initial direct costs incurred when entering into the lease less any lease incentives received. These assets are accounted for by Commonwealth lessees as separate asset classes to corresponding assets owned outright, but included in the same column as where the corresponding underlying assets would be presented if they were owned.

An impairment review is undertaken for any leased ROU asset that shows indicators of impairment and an impairment loss is recognised against any leased ROU asset that is impaired. Leased ROU assets continue to be measured at cost after initial recognition in the financial statements.

#### *Revaluations*

Following initial recognition at cost, property, plant and equipment (excluding ROU assets) are carried at fair value (or an amount not materially different from fair value) less subsequent accumulated depreciation and accumulated impairment losses. 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 reverse a previous revaluation increment for that class.

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

#### *Depreciation*

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the entity 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:

	2022	2021
Leasehold improvements	Lease terms	Lease terms
Plant and equipment	4 to 10 years	4 to 10 years

The depreciation rates for ROU assets are based on the commencement date to the earlier of the end of the useful life of the ROU asset or the end of the lease term.

#### *Impairment*

All assets were assessed for impairment at 30 June 2022.

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 entity were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

#### *Derecognition*

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

#### *Intangibles*

The entity's intangibles comprise internally developed software 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 entity's software are 2 to 5 years (2021: 2 to 5 years).

All software assets were assessed for indications of impairment as at 30 June 2022.

#### **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.

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>2.2B: Other non-financial assets</b>		
Prepayments	114	172
<b>Total other non-financial assets</b>	114	172
<b>Other non-financial assets expected to be recovered</b>		
No more than 12 months	114	172
<b>Total other non-financial assets</b>	114	172

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

## 2.3: Payables

	30 June 2022	Restated 30 June 2021 <sup>1</sup>
	\$'000	\$'000
<b>2.3A: Suppliers</b>		
Trade creditors and accruals	1,621	1,351
<b>Total suppliers</b>	1,621	1,351
<b>2.3B: Other payables</b>		
Salaries and wages	333	254
Superannuation	51	45
Other employee expenses	3	3
GST payable	–	7
Revenue received in advance	–	–
<b>Total other payables</b>	387	309

<sup>1</sup> Refer to Overview

## 2.4: Interest bearing liabilities

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>2.4A: Leases</b>		
Lease liabilities	<b>3,594</b>	4,456
<b>Total leases</b>	<b>3,594</b>	4,456
<b>Maturity analysis – contractual undiscounted cash flows</b>		
Within 1 year	<b>918</b>	882
Between 1 to 5 years	<b>2,714</b>	3,632
<b>Total leases</b>	<b>3,632</b>	4,514

The above lease disclosure should be read in conjunction with the accompanying notes 1.1C and 2.2.

### Accounting policy

#### *Leases*

For all new contracts entered into, the OAIC considers whether the contract is or contains a lease. A lease is defined as 'a contract, or part of a contract, that conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration'.

Once it has been determined that a contract is or contains a lease, the lease liability is initially measured at the present value of the lease payments unpaid at the commencement date, discounted using the interest rate implicit in the lease, if that rate is readily determinable, or the department's incremental borrowing rate.

Subsequent to initial measurement, the liability will be reduced for payments made and increased for interest. It is remeasured to reflect any reassessment or modification to the lease. When the lease liability is remeasured, the corresponding adjustment is reflected in the right-of-use asset or profit and loss depending on the nature of the reassessment or modification.

## Funding

This section identifies the OAIC funding structure.

### 3.1: Appropriations

#### 3.1A: Annual appropriations ('recoverable GST exclusive')

##### Annual appropriations for 2022

	Annual Appropriation	Adjustments to appropriation <sup>1</sup>	Total appropriation	Appropriation applied in 2022 (current and prior years)	Variance <sup>2</sup>
	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Departmental</b>					
Ordinary annual services	26,730	533	27,263	(26,658)	605
Equity injections	550	31	581	(153)	428
<b>Total departmental</b>	<b>27,280</b>	<b>564</b>	<b>27,844</b>	<b>(26,811)</b>	<b>1,033</b>

<sup>1</sup> Adjustments to appropriations includes PGPA Act s 74 receipts.

<sup>2</sup> Variance represents the application of current and previous years appropriation and own-source revenue.

##### Annual appropriations for 2021

	Annual Appropriation	Adjustments to appropriation <sup>1</sup>	Total appropriation	Appropriation applied in 2021	Variance <sup>2</sup>
	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Departmental</b>					
Ordinary annual services	20,948	2,423	23,371	(23,565)	(194)
<b>Total departmental</b>	<b>20,948</b>	<b>2,423</b>	<b>23,371</b>	<b>(23,565)</b>	<b>(194)</b>

<sup>1</sup> Adjustments to appropriations includes PGPA Act s 74 receipts.

<sup>2</sup> Variance represents the application of current and previous years appropriation and own-source revenue.

## 3.1B: Unspent annual appropriations ('recoverable GST exclusive')

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>Departmental</b>		
<i>Cash or cash equivalents</i>	<b>2,931</b>	1,839
<i>Appropriation Act (No. 1) 2021–22</i>	<b>533</b>	–
<i>Appropriation Act (No. 4) 2021–22</i>	<b>550</b>	–
<i>Appropriation Act (No. 1) 2020–21</i>	<b>807</b>	1,576
<i>Supply Act (No. 1) 2020–21</i>	<b>847</b>	1,097
<i>Appropriation Act (No. 2) 2019–20</i>	–	122
<b>Total departmental</b>	<b>5,668</b>	4,634

## 3.2: Net cash appropriation arrangements

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>Total comprehensive income/(loss) – as per the Statement of comprehensive income</b>	<b>(416)</b>	<b>(2,830)</b>
<b>Plus:</b> depreciation/amortisation of assets funded through appropriations (departmental capital budget funding and/or equity injections)	<b>1,063</b>	901
<b>Plus:</b> depreciation of right-of-use assets	<b>935</b>	1,748
<b>Less:</b> lease principal repayments	<b>(862)</b>	(1,796)
<b>Less:</b> Changes in asset revaluation reserve	<b>(100)</b>	–
<b>Net cash operating surplus/(deficit)</b>	<b>620</b>	<b>(1,977)</b>

## 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.

### 4.1: Employee provisions

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>4.1A: Employee provisions</b>		
Leave	3,692	3,412
<b>Total employee provisions</b>	<b>3,692</b>	<b>3,412</b>
<b>Employee provisions expected to be settled</b>		
No more than 12 months	1,718	1,505
More than 12 months	1,974	1,907
<b>Total employee provisions</b>	<b>3,692</b>	<b>3,412</b>

#### Accounting policy

Liabilities for short-term employee benefits and termination benefits expected within 12 months of the end of reporting period are measured at their nominal amounts.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

#### 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 (Finance) and summarised in the Standard parameters for use in 2021–22 financial statements published on the Finance 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 when the entity has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.



### *Superannuation*

The OAIC's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), 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 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 Australian 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.

### **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. The OAIC has determined the key management personnel to be the Information Commissioner and Deputy Commissioner or individuals acting in those positions for a specified time.

The below 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.

	30 June 2022	30 June 2021
	\$'000	\$'000
Short-term employee benefits	764	717
Post-employment benefits	87	86
Other long-term employee benefits	33	17
Termination benefits	–	–
<b>Total key management personnel remuneration expenses</b>	<b>884</b>	<b>820</b>

The total number of key management personnel that are included in the above table are 4 (2021: 2).

## 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 other members of the executive government, and other Australian Government entities.

### Transactions with related parties

Given the breadth of Australian 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.

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
- 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 OAIC manages financial risks within its operating environment.

### 5.1A: Contingent assets and liabilities

#### Quantifiable contingencies

At the time of signing these financial statements, the OAIC had no quantifiable contingent liabilities.

#### Unquantifiable contingencies

As at 30 June 2022, the Information Commissioner is a respondent party to 12 proceedings in the Federal Court and a respondent party to one proceeding in the Federal Circuit Court.

Twelve of the proceedings before the federal courts in which the Information Commissioner is a respondent party concern reviews under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) of

Information Commissioner decisions made under the *Privacy Act 1988*. In one of these proceedings, there is a capped costs order in place. In the other proceeding, the Information Commissioner is a respondent party to an application for leave to appeal against the Federal Court's interlocutory decision in civil penalty proceedings commenced by the Information Commissioner.

Although the federal courts may award costs, the Information Commissioner's exposure to a costs order is unlikely in those matters where she appears as a respondent party, based on current legal advice. It is not possible to estimate the amounts of payment(s) that may be required in relation to the matters where a costs order may materialise at the conclusion of the proceeding.

The Information Commissioner is also a respondent party to 8 proceedings in the Administrative Appeals Tribunal (AAT). However, as the AAT 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

	30 June 2022	30 June 2021
	\$'000	\$'000
<b>5.2A: Categories of financial instruments</b>		
<b>Financial assets at amortised cost</b>		
Cash on hand or on deposit	2,931	1,839
Trade and other receivables	–	62
<b>Total financial assets at amortised cost</b>	<b>2,931</b>	<b>1,901</b>
<b>Financial liabilities</b>		
<b>Financial liabilities measured at amortised cost</b>		
Trade creditors and accruals	1,621	1,351
<b>Total financial liabilities measured at amortised cost</b>	<b>1,621</b>	<b>1,351</b>
<b>Total financial liabilities</b>	<b>1,621</b>	<b>1,351</b>

### Accounting policy

#### *Financial assets*

In accordance with AASB 9 Financial Instruments, the entity classifies its financial assets in the following categories:

- financial assets at fair value through profit or loss
- financial assets at fair value through other comprehensive income
- financial assets measured at amortised cost.

The classification depends on both the entity's business model for managing the financial assets and contractual cash flow characteristics at the time of initial recognition. Financial assets are recognised when the entity becomes a party to the contract and, as a consequence, has a legal right to receive or a legal obligation to pay cash and derecognised when the contractual rights to the cash flows from the financial asset expire or are transferred upon trade date.

Comparatives have not been restated on initial application.

#### *Financial assets at amortised cost*

Financial assets included in this category need to meet 2 criteria:

- the financial asset is held in order to collect the contractual cash flows
- the cash flows are solely payments of principal and interest on the principal outstanding amount.

Amortised cost is determined using the effective interest method.

### Effective interest method

Income is recognised on an effective interest rate basis for financial assets that are recognised at amortised cost.

### Impairment of financial assets

Financial assets are assessed for impairment at the end of each reporting period based on expected credit losses, using the general approach that measures the loss allowance based on an amount equal to lifetime expected credit losses where risk has significantly increased, or an amount equal to 12-month expected credit losses if risk has not increased.

The simplified approach for trade, contract and lease receivables is used. This approach always measures the loss allowance as the amount equal to the lifetime expected credit losses.

A write-off constitutes a derecognition event where the write-off directly reduces the gross carrying amount of the financial asset.

### Financial liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities. Financial liabilities are recognised and derecognised upon 'trade date'.

### Financial liabilities at amortised cost

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

### Accounting policy

The OAIC considers the fair value hierarchy levels at the end of the reporting period. There were no transfers in or out of any levels during the reporting period.

	Valuation technique(s) and inputs used	Fair value measurements at the end of the reporting period			
		30 June 2022		30 June 2021	
		Category (Level 1, 2 or 3)	\$'000	Category (Level 1, 2 or 3)	\$'000
<b>Non-financial assets</b> Infrastructure, plant and equipment	Cost approach: estimate the cost to a market participant of replacing the subject asset by reference to the lower of either reproduction or replacement cost.	3	1,515	2	1,545

All revaluations were conducted in accordance with the revaluation policy stated at Note 2.2. On 30 June 2022, an independent valuer conducted the revaluations.

## Other information

### 6.1: Current/non-current distinction for assets and liabilities

	30 June 2022	Restated 30 June 2021 <sup>1</sup>
	\$'000	\$'000
<b>Assets expected to be recovered in:</b>		
<b>No more than 12 months</b>		
Cash and cash equivalents	2,931	1,839
Good and services	–	62
Appropriation receivables	2,737	2,795
GST receivables	134	141
Prepayment	114	172
<b>Total no more than 12 months</b>	<b>5,916</b>	<b>5,009</b>
<b>More than 12 months</b>		
Property lease	3,505	4,440
Infrastructure, plant and equipment	1,515	1,545
Intangibles	577	621
<b>Total more than 12 months</b>	<b>5,597</b>	<b>6,606</b>
<b>Total assets</b>	<b>11,513</b>	<b>11,615</b>
<b>Liabilities expected to be settled in:</b>		
<b>No more than 12 months</b>		
Suppliers	1,621	1,351
Salaries and wages	333	254
Superannuation	51	45
Other employee expenses	3	3
GST payable	–	7
Leases	902	–
Employee provisions	1,718	1,505
<b>Total no more than 12 months</b>	<b>4,628</b>	<b>3,165</b>
<b>More than 12 months</b>		
Leases	2,692	4,456
Employee provisions	1,974	1,907
<b>Total more than 12 months</b>	<b>4,666</b>	<b>6,363</b>
<b>Total liabilities</b>	<b>9,294</b>	<b>9,528</b>

<sup>1</sup> Refer to Overview.





## Part 5: Appendices

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## Appendix A: Agency resource statement and resources for outcomes

**Table A.1: OAIC resource statement 2021–22**

	Actual available appropriation for 2021–22 \$'000	Payments made 2021–22 \$'000	Balance remaining for 2021–22 \$'000
	(a)	(b)	(a) – (b)
<b>Departmental</b>			
Annual appropriations – ordinary annual services*	28,570	25,639	2,931
Annual appropriations – other services s 74 <sup>†</sup>	3,206	1,019	2,187
Annual appropriations – other services – non-operating <sup>§</sup>	703	153	550
<b>Total departmental annual appropriations</b>	32,479	26,811	5,668
<b>Total available annual appropriations and payments</b>	32,479	26,811	5,668
<b>Total resourcing and payments</b>	32,479	26,811	
<b>Total net resourcing and payments for the OAIC</b>	32,479	26,811	

All figures are Goods and Services Tax (GST) exclusive.

\* *Appropriation Act (No. 1) 2021–2022* and unspent cash or cash equivalents.

<sup>†</sup> *Appropriation Act (No. 1) 2020–2021* and *Supply Act (No. 1) 2020–2021*, includes *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and s 74 retained revenue receipts.

<sup>§</sup> *Appropriation Act (No. 4) 2021–2022* and *Appropriation Act (No. 2) 2019–2020*.

Table A.2: OAIC resources for outcomes 2021–22

	Budget 2021–22 \$'000	Actual expenses 2021–22 \$'000	Variation 2021–22 \$'000
	(a)	(b)	(a) – (b)
<b>Outcome 1</b>			
Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of Information Commissioner, freedom of information and privacy functions			
<b>Program 1.1</b>			
Complaint handling, compliance and monitoring, and education and promotion			
Administered expenses	–	–	–
Departmental expenses			
Departmental appropriation*	24,421	25,402	–981
s 74 External Revenue	150	186	–36
Expenses not requiring appropriation in the Budget year	1,257	2,066	–809
<b>Total for program 1.1</b>	<b>25,828</b>	<b>27,468</b>	<b>–1,790</b>
<b>Total expenses for outcome 1</b>	<b>25,828</b>	<b>27,468</b>	<b>–1,790</b>
	<b>2021–22</b>	<b>2021–22</b>	
<b>Average staffing level (number)</b>	<b>147</b>	<b>118</b>	<b>29</b>

\* Departmental appropriation combines ordinary annual services (Appropriation Act No. 1 and Supply Act No. 1 2021–22) and PGPA Act.

## Appendix B: Executive remuneration

### Key management personnel

The OAIC has determined that our key management personnel (KMP) are the Information Commissioner and deputy commissioner or individuals acting in those positions for a specified time. Angelene Falk held the position of Information Commissioner for the duration of the reporting period. Elizabeth Hampton held the position of deputy commissioner for part of the reporting period. Bruce Cooper and Melanie Drayton acted as deputy commissioner for part of the reporting period.

Details of KMP remuneration are in Note 4.2 of the financial statements. Disaggregated information is shown in Table B.1 and is prepared in accordance with the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) and *Commonwealth entities executive remuneration reporting guide for annual reports (RMG 138)*.

### Senior Executive Service

At 30 June 2022, the OAIC had 4 permanent and 2 temporary Senior Executive Service (SES) positions, including the deputy commissioner; assistant commissioner dispute resolution; assistant commissioner regulation and strategy; assistant commissioner freedom of information and assistant commissioner corporate. The position of senior assistant commissioner commenced in June 2022 and includes the functions of chief security officer, chief risk officer and privacy champion, and responsibility for governance and integrity.

### Remuneration policies and practices

In accordance with s 17 of the *Australian Information Commissioner Act 2010*, the Information Commissioner's remuneration is set by the Remuneration Tribunal. The Remuneration Tribunal also determines increases to remuneration or allowances.

The OAIC's SES remuneration is determined by the Information Commissioner under s 24(1) of the *Public Service Act 1999*. When determining SES remuneration, the Information Commissioner has regard to the Australian Public Service Commission's remuneration reports and remuneration practices in comparable agencies.

SES determinations set out the salary on commencement and provide for increments in salary. To be eligible for an increase in salary, an SES officer must obtain an annual performance rating of effective or above, which aligns with the OAIC's performance management framework, *Talking about performance*.

The Information Commissioner sets and reviews the deputy commissioner's performance agreement. The deputy commissioner sets and reviews assistant commissioners' performance agreements.

**Table B.1: Information about remuneration for key management personnel**

		Short-term benefits			Post-employment benefits	Other long-term benefits	Termination benefits	Total remuneration
Name	Position title	Base salary	Bonuses	Other benefits and allowances	Superannuation contributions	Long service leave	Other long-term benefits	
Angelene Falk	Information Commissioner	\$442,014	0	0	\$36,434	\$15,305	0	\$493,753
Elizabeth Hampton	Deputy commissioner	\$91,883	0	0	\$17,712	\$7,820	0	\$117,415
Melanie Drayton	Acting deputy commissioner	\$122,305	0	0	\$18,414	\$6,500	0	\$147,219
Bruce Cooper	Acting deputy commissioner	\$107,316	0	0	\$14,762	\$3,933	0	\$126,011

**Table B.2: Information about remuneration for senior executives**

		Short-term benefits			Post-employment benefits	Other long-term benefits	Termination benefits	Total remuneration
Total remuneration bands	Number of senior executives*	Average base salary	Average bonuses	Average other benefits and allowances	Average superannuation contributions	Average long service leave	Average other long-term benefits	Average total remuneration
\$0–\$220,000	8	\$92,388	0	0	\$12,161	\$2,970	0	\$107,519
\$245,001–\$270,000	1	\$212,526	0	0	\$27,258	\$6,831	0	\$246,615

\* The total number of senior executives includes temporary acting arrangements throughout 2021–22 and therefore exceeds the number of executives in the organisational structure in Part 1.



Table B.3: Information about remuneration for other highly paid staff

		Short-term benefits			Post-employment benefits		Other long-term benefits		Termination benefits	Total remuneration
Total remuneration bands	Number of other highly paid staff	Average base salary	Average bonuses	Average other benefits and allowances	Average superannuation contributions	Average long service leave	Average other long-term benefits	Average termination benefits	Average total remuneration	
\$295,001–\$320,000	1	\$260,006	0	0	\$35,035	\$8,357	0	0	\$303,398	

Table B.4: Details of accountable authority during the reporting period

Period as the accountable authority or member within the reporting period			
Name	Position title/position held	Date of commencement	Date of cessation
Angelene Falk*	Australian Information Commissioner	1 July 2021	30 June 2022

\* Angelene Falk was appointed by the Governor-General to the roles of Australian Information Commissioner and Privacy Commissioner on 16 August 2018. On 6 August 2021, she was reappointed for a second 3-year term, from 16 August 2021 to 15 August 2024.

## Appendix C: Workforce statistics

This appendix includes the OAIC's workforce statistics. The statistics include staffing numbers, employment type, classifications, gender, location and diversity.

**Table C.1: Ongoing staff at 30 June 2022 by location, gender and employment type**

	Male			Female			Indeterminate			Total
	Full time	Part time	Total male	Full time	Part time	Total female	Full time	Part time	Total indeterminate	
NSW	24	0	24	50	20	70	0	0	0	94
Qld	0	0	0	2	1	3	0	0	0	3
SA	0	0	0	1	0	1	0	0	0	1
Tas	0	0	0	0	0	0	0	0	0	0
Vic	0	0	0	1	2	3	0	0	0	3
WA	0	0	0	1	0	1	0	0	0	1
ACT	0	0	0	5	0	5	0	0	0	5
NT	0	0	0	0	0	0	0	0	0	0
External territories	0	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>24</b>	<b>0</b>	<b>24</b>	<b>60</b>	<b>23</b>	<b>83</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>107</b>

Table C.2: Non-ongoing staff at 30 June 2022 by location, gender and employment type

	Male				Female				Indeterminate				Total
	Full time	Part time	Casual	Total male	Full time	Part time	Casual	Total female	Full time	Part time	Casual	Total indeterminate	
NSW	9	2	1	12	7	2	2	11	0	0	0	0	23
Qld	0	0	0	0	0	2	0	2	0	0	0	0	2
SA	0	0	0	0	1	0	0	1	0	0	0	0	1
Tas	0	0	0	0	0	0	0	0	0	0	0	0	0
Vic	0	0	0	0	0	0	0	0	0	0	0	0	0
WA	0	0	0	0	0	0	0	0	0	0	0	0	0
ACT	1	0	0	1	0	1	0	1	0	0	0	0	2
NT	0	0	0	0	0	0	0	0	0	0	0	0	0
External territories	0	0	0	0	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	10	2	1	13	8	5	2	15	0	0	0	0	28

Table C.3: Ongoing staff at 30 June 2021 by location, gender and employment type

	Male			Female			Indeterminate		Total
	Full time	Part time	Total male	Full time	Part time	Total female	Full time	Part time	
NSW	26	0	26	63	20	83	0	0	109
Qld	0	0	0	0	0	0	0	0	0
SA	0	0	0	1	0	1	0	0	1
Tas	0	0	0	0	0	0	0	0	0
Vic	0	0	0	0	0	0	0	0	0
WA	0	0	0	0	0	0	0	0	0
ACT	0	0	0	2	0	2	0	0	2
NT	0	0	0	0	0	0	0	0	0
External territories	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	0	0	0	0	0
Total	26	0	26	66	20	86	0	0	112

Table C.4: Non-ongoing staff at 30 June 2021 by location, gender and employment type

	Male				Female				Indeterminate			Total
	Full time	Part time	Casual	Total male	Full time	Part time	Casual	Total female	Full time	Part time	Casual	Total indeterminate
NSW	8	1	0	9	7	3	1	11	0	0	0	20
Qld	0	0	0	0	1	0	0	1	0	0	0	1
SA	1	0	0	1	0	0	0	0	0	0	0	1
Tas	0	0	0	0	0	0	0	0	0	0	0	0
Vic	0	1	0	1	0	1	0	1	0	0	0	2
WA	0	0	0	0	0	0	0	0	0	0	0	0
ACT	1	0	0	1	1	0	0	1	0	0	0	2
NT	0	0	0	0	0	0	0	0	0	0	0	0
External territories	0	0	0	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>10</b>	<b>2</b>	<b>0</b>	<b>12</b>	<b>9</b>	<b>4</b>	<b>1</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>26</b>

Table C.5: Ongoing staff at 30 June 2022 by classification, gender and employment type

	Male			Female			Indeterminate		Total
	Full time	Part time	Total male	Full time	Part time	Total female	Full time	Part time	Total indeterminate
SES3	0	0	0	0	0	0	0	0	0
SES2	0	0	0	1	0	1	0	0	1
SES1	0	0	0	3	0	3	0	0	3
EL2	4	0	4	9	8	17	0	0	21
EL1	7	0	7	20	7	27	0	0	34
APS6	8	0	8	18	5	23	0	0	31
APS5	4	0	4	9	3	12	0	0	16
APS4	1	0	1	0	0	0	0	0	1
APS3	0	0	0	0	0	0	0	0	0
APS2	0	0	0	0	0	0	0	0	0
APS1	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0
Total	24	0	24	60	23	83	0	0	107

Table C.6: Non-ongoing staff at 30 June 2022 by classification, gender and employment type

	Male				Female				Indeterminate				Total
	Full time	Part time	Casual	Total male	Full time	Part time	Casual	Total female	Full time	Part time	Casual	Total indeterminate	
SES3	0	0	0	0	0	0	0	0	0	0	0	0	0
SES2	0	0	0	0	0	0	0	0	0	0	0	0	0
SES1	1	0	0	1	0	0	0	0	0	0	0	0	1
EL2	2	0	1	3	1	0	1	2	0	0	0	0	5
EL1	3	1	0	4	2	2	1	5	0	0	0	0	9
APS6	2	0	0	2	2	1	0	3	0	0	0	0	5
APS5	0	0	0	0	2	0	0	2	0	0	0	0	2
APS4	1	0	0	1	0	0	0	0	0	0	0	0	1
APS3	0	0	0	0	0	0	0	0	0	0	0	0	0
APS2	0	1	0	1	0	2	0	2	0	0	0	0	3
APS1	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	1	0	0	1	1	0	0	1	0	0	0	0	2
<b>Total</b>	<b>10</b>	<b>2</b>	<b>1</b>	<b>13</b>	<b>8</b>	<b>5</b>	<b>2</b>	<b>15</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>28</b>



Table C.7: Ongoing staff at 30 June 2021 by classification, gender and employment type

	Male			Female			Indeterminate			Total
	Full time	Part time	Total male	Full time	Part time	Total female	Full time	Part time	Total indeterminate	
SES3	0	0	0	0	0	0	0	0	0	0
SES2	0	0	0	1	0	1	0	0	0	1
SES1	0	0	0	1	0	1	0	0	0	1
EL2	4	0	4	9	7	16	0	0	0	20
EL1	9	0	9	18	5	23	0	0	0	32
APS6	7	0	7	22	6	28	0	0	0	35
APS5	5	0	5	15	2	17	0	0	0	22
APS4	1	0	1	0	0	0	0	0	0	1
APS3	0	0	0	0	0	0	0	0	0	0
APS2	0	0	0	0	0	0	0	0	0	0
APS1	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Total	26	0	26	66	20	86	0	0	0	112

Table C.8: Non-ongoing staff at 30 June 2021 by classification, gender and employment type

	Male				Female				Indeterminate			Total
	Full time	Part time	Casual	Total male	Full time	Part time	Casual	Total female	Full time	Part time	Casual	Total indeterminate
SES3	0	0	0	0	0	0	0	0	0	0	0	0
SES2	0	0	0	0	0	0	0	0	0	0	0	0
SES1	2	0	0	2	0	0	0	0	0	0	0	2
EL2	0	0	0	0	1	1	1	3	0	0	0	3
EL1	5	1	0	6	2	0	1	3	0	0	0	9
APS6	2	1	0	3	0	1	0	1	0	0	0	4
APS5	1	0	0	1	4	0	0	4	0	0	0	5
APS4	0	0	0	0	0	0	0	0	0	0	0	0
APS3	0	0	0	0	0	0	0	0	0	0	0	0
APS2	0	0	0	0	0	2	0	2	0	0	0	2
APS1	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	1	0	0	1	0	0	0	1
<b>Total</b>	<b>10</b>	<b>2</b>	<b>0</b>	<b>12</b>	<b>8</b>	<b>4</b>	<b>2</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>26</b>

Table C.9: Staff at 30 June 2022 by classification, ongoing or non-ongoing and employment type

Ongoing			Non-ongoing				Total
Full time	Part time	Total ongoing	Full time	Part time	Casual	Total non-ongoing	
SES3	0	0	0	0	0	0	0
SES2	1	0	0	0	0	0	1
SES1	3	0	1	0	0	1	4
EL2	13	8	3	0	2	5	26
EL1	27	7	5	3	1	9	43
APS6	26	5	4	1	0	5	36
APS5	13	3	2	0	0	2	18
APS4	1	0	1	0	0	1	2
APS3	0	0	0	0	0	0	0
APS2	0	0	0	3	0	3	3
APS1	0	0	0	0	0	0	0
Other	0	0	2	0	0	2	2
Total	84	23	107	7	3	28	135

Table C.10: Staff at 30 June 2021 by classification, ongoing or non-ongoing role and employment type

Ongoing			Non-ongoing			Total
Full time	Part time	Total ongoing	Full time	Part time	Casual	Total non-ongoing
SES3	0	0	0	0	0	0
SES2	1	0	0	0	0	1
SES1	1	0	2	0	0	3
EL 2	13	7	1	1	1	23
EL 1	27	5	7	1	0	40
APS6	29	6	2	2	0	39
APS5	20	2	5	0	0	27
APS4	1	0	1	0	0	2
APS3	0	0	0	0	0	0
APS2	0	0	0	2	0	2
APS1	0	0	0	0	0	0
Other	0	0	1	0	0	1
<b>Total</b>	<b>92</b>	<b>20</b>	<b>19</b>	<b>6</b>	<b>1</b>	<b>138</b>

**Table C.11: Staff at 30 June 2022 by location and ongoing, non-ongoing or casual role**

	Ongoing	Non-ongoing	Casual	Total
NSW	94	20	3	<b>117</b>
Qld	3	2	0	<b>5</b>
SA	1	1	0	<b>2</b>
Tas	0	0	0	<b>0</b>
Vic	3	0	0	<b>3</b>
WA	1	0	0	<b>1</b>
ACT	5	2	0	<b>7</b>
NT	0	0	0	<b>0</b>
External territories	0	0	0	<b>0</b>
Overseas	0	0	0	<b>0</b>
<b>Total</b>	<b>107</b>	<b>25</b>	<b>3</b>	<b>135</b>

**Table C.12: Staff at 30 June 2021 by location and ongoing, non-ongoing or casual role**

	Ongoing	Non-ongoing	Casual	Total
NSW	109	19	1	<b>129</b>
Qld	0	1	0	<b>1</b>
SA	1	1	0	<b>2</b>
Tas	0	0	0	<b>0</b>
Vic	0	2	0	<b>2</b>
WA	0	0	0	<b>0</b>
ACT	2	2	0	<b>4</b>
NT	0	0	0	<b>0</b>
External territories	0	0	0	<b>0</b>
Overseas	0	0	0	<b>0</b>
<b>Total</b>	<b>112</b>	<b>25</b>	<b>1</b>	<b>138</b>

**Table C.13: Ongoing and non-ongoing Aboriginal and Torres Strait Islander staff at 30 June 2022 and 30 June 2021**

	Total at 30 June 2022	Total at 30 June 2021
Ongoing	1	2
Non-ongoing	0	0
<b>Total</b>	<b>1</b>	<b>2</b>

**Table C.15: Readily available salary ranges by classification level at 30 June 2022**

	Minimum salary	Maximum salary
SES 3	0	0
SES 2	\$239,272	\$274,289
SES 1	\$188,320	\$218,064
EL 2	\$125,218	\$145,619
EL 1	\$107,804	\$117,509
APS 6	\$85,541	\$95,986
APS 5	\$77,575	83,569
APS 4	\$69,583	\$75,339
APS 3	\$60,509	\$66,547
APS 2	\$54,584	\$60,030
APS 1	\$46,940	\$54,234
Other	0	0
<b>Minimum/maximum range</b>	<b>\$46,940</b>	<b>\$274,289</b>

**Table C.14: Staff arrangements at 30 June 2022**

	SES	Non-SES	Total
OAIC Enterprise Agreement 2016–2019 (ongoing and non-ongoing)	Not applicable	125	<b>125</b>
OAIC Enterprise Agreement 2016–2019 (casual staff)	Not applicable	3	<b>3</b>
SES Determination made under <i>Public Service Act 1999</i> s 24(1)	5	Not applicable	<b>5</b>
<b>Total</b>	<b>5</b>	<b>128</b>	<b>133</b>

## Appendix D: Memorandums of understanding

### Australian Capital Territory Government

Under our memorandum of understanding (MOU) with the Australian Capital Territory (ACT) Government, the OAIC continued to provide privacy services to ACT public sector agencies in relation to the *Information Privacy Act 2014* (ACT). These services included:

- responding to privacy complaints and enquiries about ACT public sector agencies
- providing policy and legislation advice and guidance
- providing advice on data breach notifications, where applicable
- carrying out privacy assessments.

The OAIC received \$177,500 (GST exclusive) for these services from the ACT Government in 2021–22.

For further information on our activities under this MOU, see the *Memorandum of understanding with the Australian Capital Territory for the provision of privacy services: Annual report 2021–22* on our website.

### Australian Human Rights Commission

The OAIC's MOU with the Australian Human Rights Commission (AHRC) for the provision of corporate services concluded on 30 June 2022. Under this MOU, the AHRC provided a number of corporate services to the OAIC, including financial, information technology and human resources services. We paid \$1,979,444.63 (GST exclusive) for corporate services.

### Department of Finance Service Delivery Office

The OAIC transitioned our payroll and finance services to the Service Delivery Office (SDO) in May 2022. Under this MOU, the SDO provides the OAIC with transactional finance and human resources shared services. The OAIC paid \$1,227,652 (GST not applicable) for the cost of onboarding during 2021–22.

### Department of Education, Skills and Employment

The OAIC transitioned our ICT services to the Department of Education, Skills and Employment in May 2022. The OAIC paid a service fee of \$63,459 (GST not applicable) for the period of 16 May to 30 June 2022. The OAIC also paid \$311,035 (GST not applicable) for the cost of onboarding during 2021–22. This fee is in addition to associated hardware and installation fees.

### Department of Home Affairs

In June 2022, the OAIC and Department of Home Affairs extended the term of the letter of exchange under which we will provide a passenger name record (PNR) data-related assessment to 30 June 2023.

The agreement between Australia and the European Union (EU) on the processing and transfer of PNR data states: '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'.

Assessment fieldwork was undertaken in June 2022 over 2 days in Canberra. The assessment report will be finalised in 2022–23.

During the reporting period, the OAIC did not receive a fee as the assessment was not completed. The revenue related to this assessment will be recognised on completion.



## Appendix E: FOI statistics

This appendix contains information regarding:

- requests for access to documents
- applications for the amendment of personal records
- charges
- disclosure logs
- review of freedom of information (FOI) decisions
- complaints about agency FOI actions
- the impact of FOI on agency resources
- the impact of the Information Publication Scheme (IPS) on agency resources.

It has been prepared using data collected from Australian Government agencies and ministers subject to the *Freedom of Information Act 1982* (FOI Act), and separately from the Administrative Appeals Tribunal (AAT) and records of the OAIC. 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 to documents, 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.<sup>1</sup>

The data given by ministers and agencies for the preparation of this appendix is published on [data.gov.au](https://data.gov.au).<sup>2</sup>

### 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 the 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 or 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 statistics in this report do not include requests that did not satisfy those requirements.

The Governor-General made one Administrative Arrangements Order (AAO) in 2021–22, on 23 June 2022. This AAO took effect on 1 July 2022, outside the period reported for this Appendix. As a result, no changes giving effect to this AAO are noted in this document.

Following the change of government in May 2022, the Governor-General swore in a new ministry on 1 June 2022. Where the name and responsibilities of the new ministers are the same as those in the previous government, no change has been made to the reporting arrangements on the FOI statistics database. However, where the name and responsibilities of the new ministers differ from those in the previous government, a new ministerial post has been created and statistics for the new ministers reflect FOI activity for the period 1 June 2022 to

<sup>1</sup> 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 Officers 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.

<sup>2</sup> The data reported in this appendix has been rounded to whole numbers with the exception of staff hours. In some cases this means numbers will not add to 100%.

30 June 2022. Some ministerial posts were abolished on 1 June 2022.

## Number of FOI requests received

Table E.1 compares the number of FOI requests received in each of the past 6 reporting years, including the percentage increase or decrease from the previous financial year.

The number of FOI requests made to Australian Government agencies decreased by 2% in 2021–22 to 34,236, which is 561 fewer than the previous financial year.

As can be seen from Table E.2, the decrease in the number of FOI requests received by Australian Government agencies and ministers in 2021–22 resulted from decreases in requests for access to personal information made to the 20 agencies receiving the highest numbers of requests. Among these agencies are the Department of Home Affairs (Home Affairs), Services Australia, the Department of Veterans' Affairs (Veterans' Affairs), the AAT, the Australian Taxation Office (ATO) and the Australian Federal Police (AFP).

These top 20 agencies received 1,537 (6%) fewer requests for access to personal information in 2021–22 than in 2020–21. They received 1,117 (14%) more requests for non-personal information.

Overall, there were 173 more FOI requests to agencies outside the top 20 than in 2020–21.

## Number of FOI requests received by an agency or minister

The agencies that received the largest numbers of FOI requests in 2021–22 were Home Affairs, Services Australia, the National Disability Insurance Agency

(NDIA), Veterans' Affairs, the AAT, and the Department of Health (Health).

Together, these 6 agencies received 75% of FOI requests received by Australian Government agencies and ministers, and 87% of all requests for access to personal information. These proportions are almost the same as in 2020–21, when the top 6 agencies received 77% of requests overall and 91% of requests for access to personal information.

There does not appear to be any overriding or global reason for changes in FOI request numbers expressed by Australian Government agencies and ministers in 2021–22. Agency-specific factors appear to be most relevant in accounting for significant increases or decreases in FOI requests.

For example, the Australian Bureau of Statistics (ABS) attributes its increase in FOI requests to the 2021 Census, while for the Australian Electoral Commission (AEC) it was the 2022 federal election. Australia Post explains that it undertook a significant recruitment drive for casual staff and its increase in FOI requests is due to a higher volume of requests for medical documents connected with recruitment. The Australian Nuclear Science and Technical Organisation reports that a decline in its request numbers this year is in line with a trend observed since 2020 and may be due to the COVID-19 pandemic.

Despite experiencing a 7% decrease in the number of FOI requests in 2021–22, Home Affairs continued to receive the largest number of requests of any Australian Government agency or minister, accounting for 14,644 or 43% of all FOI requests. In 2020–21, Home Affairs received 15,825 requests, or 46% of all FOI requests received that year.

Services Australia (and its predecessor, the Department of Human Services) has received the second highest number of FOI requests since 2013–14, despite

**Table E.1: FOI requests received over the past 6 years**

	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21	2021–22
Number of FOI requests received	37,966	39,519	34,438	38,879	41,333	34,797	34,236
Change from previous financial year (%)	+7	+4	–13	+13	+6	–16	–2

experiencing a 16% decrease in FOI request numbers in 2021–22. It received 4,627 requests, down from 5,484 in 2020–21.

The NDIA received 974 more FOI requests in 2021–22 than in 2020–21 (a 107% increase). This resulted in it receiving the third highest number of FOI requests (it received the fourth highest number in 2020–21). The NDIA was not able to comment on the specific drivers for the significant increase in FOI request numbers.

Veterans' Affairs received 142 fewer FOI requests in 2021–22 than in 2020–21 (a 7% decrease). Veterans' Affairs says that in 2021–22, it established an Information Access Unit that brought previously separate areas of the agency together to provide a single point of access to the information it holds. This resulted in changes to the way data is recorded and may account for the reported decrease in the number of FOI requests.

The AAT received 95 fewer FOI requests in 2021–22 than during the previous reporting period, which was a 6% decrease.

Health received 621 more FOI requests in 2021–22 than in 2020–21 (a 98% increase). Health explains that its central role in the Australian Government's health response to the COVID-19 pandemic is reflected in the substantial increase in FOI requests received in 2021–22. Seventy-five per cent of FOI requests Health received during the year relate to the COVID-19 pandemic, with 37% of requests seeking access to documents relating to scientific evidence of the virus.

The 20 agencies that received the largest number of requests in 2021–22 are shown in Table E.2, with a comparison to the number of requests they received in 2020–21.

Other agencies to experience significant increases in FOI requests in 2021–22 compared with 2020–21 include the Department of the Prime Minister and Cabinet (PM&C) (a 76% increase), IP Australia (73% more), the OAIC (59%), the Department of Foreign Affairs and Trade (DFAT) (34%), the Attorney-General's Department (AGD) (26%) and Australia Post (26%).

According to PM&C, 2021–22 saw increased community engagement in requests for access to government information, with a particular focus on National Cabinet documents. Other areas of interest included documents related to the Australian Government's

response to disasters, and decisions about grant or program funding.

The OAIC observed an increase in the volume and complexity of requests (including applications for amendment) from a small cohort of applicants. This small cohort alone accounted for 35% of the total FOI requests received by the OAIC in 2021–22.

IP Australia advises that most of the FOI requests it receives relate to trade mark documents. Because trade mark filings have steadily increased over recent years, with a marked increase during the COVID-19 lockdowns, there has been a concurrent increase in FOI requests for these documents. IP Australia has also adopted changes to its reporting practices that have resulted in an increase in FOI requests being reported.

Other agencies experienced significant decreases in FOI request numbers in 2021–22 compared with 2020–21. As noted above, Home Affairs, Services Australia, Veterans' Affairs, and the AAT received fewer FOI requests in 2021–22 than in 2020–21. Other agencies to experience significant decreases include the Department of Industry, Science, Energy and Resources (DISER) (a 39% decrease), the AFP (a 35% decrease) and the ATO (an 11% decrease).

## Requests for personal and 'other' documents

In 2021–22, 25,173 FOI requests (or 74% of all requests) were for documents containing personal information. This is a smaller proportion than in previous years and continues the trend of declining requests for personal information (when expressed as a proportion of all FOI requests). In 2020–21, 77% of all FOI requests were for predominantly personal information. In 2019–20, it was 81%, in 2018–19, 83%, in 2017–18, 82%, in 2016–17, 82%, and in 2015–16, 87%.

The decrease in the proportion of personal FOI requests may be the result of agencies increasingly making documents available to members of the public via online portals and through other administrative access schemes.

In 2021–22, 9,063 FOI requests (or 26% of all requests) were for 'other' (non-personal) information. This is a higher proportion than in 2020–21, when 23% of all requests were for other information. In 2019–20,

the proportion was 19%, in 2018–19, it was 17%, in 2017–18 and 2016–17, it was 18%, in 2015–16, 13%, and in 2014–15, 15%.

It is possible that some of the increase in the proportion of non-personal (or ‘other’) FOI requests is due to the COVID-19 pandemic and interest in the Australian Government’s response to the pandemic.

However, there was also considerable variance across government in the number and proportion of personal and ‘other’ FOI requests in 2021–22.

Home Affairs experienced a 7% decrease in total FOI requests in 2021–22 (down by 1,181). It received 6% fewer personal FOI requests and 14% fewer requests for access to other information.

Home Affairs attributes its decrease in FOI requests and, in particular, the decrease in requests for access to other (non-personal) information, to changes made to its website in 2021–22. The changes made it easier for the public to navigate and find certain non-personal information, such as departmental

statistics and the agency’s FOI disclosure log. It also increased the number of statistical reports published on its website and on [data.gov.au](https://data.gov.au), which provide information that otherwise may have been requested through FOI. Home Affairs advises it continues to improve alternative channels for people to access or amend their personal information.

Services Australia experienced a 16% decrease in total FOI requests in 2021–22 (down by 857). It received 16% fewer personal FOI requests and 1% more requests for access to other information.

The AAT experienced a 6% decrease in total FOI requests in 2021–22 (down by 95). It received 7% fewer personal FOI requests, but had a 62% increase in requests for access to other information.

Health experienced an 98% increase in total FOI requests in 2021–22 (up by 621). While Health received 72% fewer personal FOI requests, there was a 138% increase in requests for access to other information.

Table E.2: Agencies by number of FOI requests received

Agency	2020–21					2021–22				
	Rank*	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other	Total	% of all FOI requests
Department of Home Affairs	1	13,667	2,158	15,825	46	1	12,793	1,851	14,644	43
Services Australia	2	5,254	230	5,484	16	2	4,395	232	4,627	14
National Disability Insurance Agency	5	709	201	910	3	3	1,615	269	1,884	6
Department of Veterans' Affairs	3	1,810	117	1,927	6	4	1,642	143	1,785	5
Administrative Appeals Tribunal	4	1,568	32	1,600	5	5	1,453	52	1,505	4
Department of Health	8	119	514	633	2	6	33	1,221	1,254	4
Australian Taxation Office	6	728	177	905	3	7	573	231	804	2
Department of Defence	9	228	336	564	2	8	138	392	530	2
Australian Federal Police	7	619	135	754	2	9	386	106	492	1
Australian Transaction Reports and Analysis Centre	10	221	153	374	1	10	294	119	413	1
Department of Foreign Affairs and Trade	1	90	187	277	1	11	147	224	371	1
Department of the Prime Minister and Cabinet <sup>†</sup>	N/A	8	173	181	1	12	16	302	318	1
Office of the Australian Information Commissioner	20	122	71	193	1	13	153	154	307	1
IP Australia <sup>†</sup>	N/A	0	176	176	1	14	0	304	304	1

Agency	2020–21					2021–22					
	Rank*	Personal	Other	Total	% of all FOI requests	Rank	Personal	Other	Total	% of all FOI requests	Change in total
Immigration Assessment Authority	11	312	5	317	1	15	300	3	303	1	–14
Australian Securities and Investments Commission	13	67	214	281	1	16	76	207	283	1	2
Attorney-General's Department	16	70	151	221	1	17	70	208	278	1	57
Department of Infrastructure, Transport, Regional Development and Communications	17	0	220	220	1	18	0	225	225	1	5
Australian Postal Corporation†	N/A	88	77	165	–†	19	123	85	208	1	43
Department of Industry, Science, Energy and Resources	12	0	310	310	1	20	0	189	189	1	–121
<b>Total top 20</b>		<b>25,680</b>	<b>5,637</b>	<b>31,317</b>	<b>95</b>		<b>24,207</b>	<b>6,517</b>	<b>30,724</b>	<b>90</b>	<b>–593</b>
Remaining agencies		1,030	2,309	3,339	10		966	2,546	3,512	10	173
<b>Total</b>		<b>26,710</b>	<b>7,946</b>	<b>34,656</b>	<b>105</b>		<b>25,173</b>	<b>9,063</b>	<b>34,236</b>	<b>100</b>	<b>–420</b>

#### Note

\* The Department of Agriculture, Water and the Environment, the Department of Education, Skills and Employment and The Treasury appeared in the top 20 agencies in 2020–21 but not in 2021–22.

† Denotes an agency not in the top 20 agencies in 2020–21.

‡ Denotes a percentage less than 1% when rounded to nearest whole number.

## FOI requests finalised

Agencies and ministers started 2021–22 with more FOI requests on hand requiring a decision than in the previous financial year (14% more than at the beginning of 2020–21).

In 2021–22, there was:

- a decrease in FOI requests received (2% less than in 2020–21)
- a reduction in the number of requests decided (5% fewer than in 2020–21)
- more requests transferred between agencies (5% more than in 2020–21)
- 38% more requests on hand at the end of the financial year (9,202) than at the beginning of it (6,647)

- a decrease in the number of FOI requests withdrawn by applicants (13% fewer than in 2020–21).

Reasons for fewer requests being withdrawn during this reporting period may include:

- fewer FOI requests overall for personal information (6% fewer in 2021–22 than in 2020–21)
- decreased use of the practical refusal provisions in s 24 of the FOI Act (if an applicant does not respond to a practical refusal notice issued under s 24AB of the FOI Act they are deemed to have withdrawn their FOI request – see s 24AB(7)).

**Table E.3: Overview of FOI requests received and finalised**

FOI request processing	2020–21	2021–22	% change
On hand at the beginning of the year	5,814*	6,647*	14
Received during the year	34,797	34,236	–2
Requiring decision†	40,611	40,883	1
Withdrawn	6,834	5,916	–13
Transferred	438	462	5
Decided‡	26,680	25,303	–5
Finalised§	33,952	31,681	–7
On hand at the end of the year	6,659	9,202	38

\* Agencies may ask the OAIC to change the number of FOI requests on hand at the beginning of a reporting year if the number carried over from the previous year is incorrect.

† Total FOI requests on hand at the beginning of this reporting period and requests received during this reporting period.

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

§ The sum of requests withdrawn, transferred and decided.

For several years, the proportion of FOI requests granted in full has been declining. This was the case again in 2021–22 when 39% of all requests were granted in full, down from 2020–21 when 41%

were granted in full. The proportion granted in full in 2019–20 was 47%, in 2018–19 it was 52% and in 2017–18 it was 50%.



The proportion of FOI requests granted in part increased to 42% in 2021–22, up slightly from 41% in 2020–21. In 2019–20, 38% of all FOI requests were granted in part.

The proportion of FOI requests refused in 2021–22 (including requests refused because the documents sought do not exist or could not be found, or a practical refusal reason existed, as well as when exemptions were applied) increased to 19%, compared with 18% in 2020–21. The proportion of FOI requests refused was 15% in 2019–20.

Agencies decided proportionally fewer personal FOI requests in 2021–22 than in 2020–21 and, as a result, decided proportionally more non-personal or ‘other’ requests. Around a quarter (27%) of all requests decided in 2021–22 were for access to non-personal information (compared with 22% in 2020–21). Requests for ‘other’ information are generally more complex than requests for access to personal information and are more likely to be subject to a wider range of exemptions under the FOI Act.

Table E.5 lists the top 20 agencies by the number of FOI decisions made in 2021–22 and shows differences in the outcomes of FOI requests compared to other agencies.

As in previous years, the percentage of FOI requests granted in full was higher for the top 20 agencies

deciding the most requests than for the remaining agencies. In 2020–21, agencies in the top 20 granted access in full to documents in 43% of all requests processed; the remaining agencies granted 20% in full. In 2021–22, agencies in the top 20 granted access in full with respect to 42% of FOI requests they decided; for agencies outside the top 20 this was 18%. In 2021–22, both groups granted access in part with respect to 42% of all requests decided. The top 20 refused access for 17% of requests decided, and all other agencies refused for 40% of requests.

Agencies processing greater numbers of FOI requests for personal information generally grant full access for more requests. This remained the case in 2021–22, with agencies that received more FOI requests for personal information granting a higher proportion of FOI requests in full than the average of 40%. These agencies include the Immigration Assessment Authority (IAA) (77% of requests granted in full), the AAT (60%), Veterans’ Affairs (55%), Home Affairs (54%) and the NDIA (48%).

However, Services Australia, which receives a high proportion of requests for access to personal information (95% of requests it receives), only granted full access for 14% of FOI requests decided in 2021–22 (down from 23% in 2020–21).

**Table E.4: Outcomes of FOI requests decided in 2021–22 compared with 2020–21**

Decision	2020–21				2021–22			
	Personal	Other	Total	%	Personal	Other	Total	%
Granted in full*	9,419	1,559	10,978	41	8,380	1,586	9,966	39
Granted in part†	8,968	2,016	10,984	41	8,411	2,136	10,547	42
Refused	2,337	2,381	4,718	18	1,766	3,024	4,790	19
<b>Total</b>	<b>20,724</b>	<b>5,956</b>	<b>26,680</b>	<b>100</b>	<b>18,557</b>	<b>6,746</b>	<b>25,303</b>	<b>100</b>

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

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

Table E.5: Top 20 agencies by numbers of FOI requests decided in 2021–22

Agency	Granted in full	%	Granted in part	%	Refused	%	Total
Department of Home Affairs	6,064	54	4,179	37	960	9	11,203
Services Australia	355	14	1,747	70	377	15	2,479
Department of Veterans' Affairs	881	55	653	41	78	5	1,612
National Disability Insurance Agency	730	48	579	38	207	14	1,516
Administrative Appeals Tribunal	689	60	422	37	40	3	1,151
Department of Health	79	8	149	15	752	77	980
Australian Taxation Office	103	18	263	47	196	35	562
Australian Federal Police	36	7	341	71	105	22	482
Department of Defence	71	17	196	46	162	38	429
Australian Transaction Reports and Analysis Centre	15	4	268	65	127	31	410
Immigration Assessment Authority	212	77	46	17	19	7	277
Department of Foreign Affairs and Trade	21	9	99	41	120	50	240
Attorney-General's Department	21	9	60	25	156	66	237
Australian Securities and Investments Commission	27	12	88	41	102	47	217
Australian Postal Corporation	62	33	8	4	120	63	190
IP Australia	41	22	138	75	6	3	185
Department of Infrastructure, Transport, Regional Development and Communications	28	15	100	55	53	29	181
Department of the Prime Minister and Cabinet	24	13	54	30	100	56	178
Department of Industry, Science, Energy and Resources	26	16	62	37	79	47	167
Office of the Australian Information Commissioner	40	25	70	43	53	33	163
<b>Top 20</b>	<b>9,525</b>	<b>42</b>	<b>9,522</b>	<b>42</b>	<b>3,812</b>	<b>17</b>	<b>22,859</b>
Remaining agencies	441	18	1,025	42	978	40	2,444
<b>Total</b>	<b>9,966</b>	<b>39</b>	<b>10,547</b>	<b>42</b>	<b>4,790</b>	<b>19</b>	<b>25,303</b>

Thirteen of the top 20 agencies refused access to documents in more instances than the average across all agencies (19%). Several agencies refused access in 50% or more cases, including Health, DFAT, AGD, Australian Post and PM&C. With the exception of Australia Post, these agencies process proportionally higher numbers of FOI requests for 'other' information. In some circumstances, the proactive publication of 'other' information can reduce the need for requests for this type of information to be made under the FOI Act.

## Use of exemptions

Table E.6 shows how Australian Government agencies and ministers claimed exemptions under the FOI Act when processing FOI requests in 2021–22. More than one exemption may be applied in processing an FOI request.

Exemptions were not claimed or were not relevant in relation to 13,749 FOI requests (54%) decided in 2021–22 (compared to 60% in 2020–21 and 64% in 2019–20). The decrease may relate to the overall decrease in the number of FOI requests granted in full.

Overall, there was very little change in the application of exemptions in 2021–22 when compared with previous years. The personal privacy exemption (s 47F) remains the most claimed exemption. It was applied in 39% of all FOI requests in which an exemption was claimed in 2021–22, slightly above the previous years' 38% (which was the same as in 2019–20 and 2018–19).

The next most claimed exemptions were:

- s 47E – certain operations of agencies: 25%; up from 21% in 2020–21, and 20% in 2019–20
- s 37 – documents affecting enforcement of law and protection of public safety: 7%; a decrease compared to 2020–21 (8%), and 2019–20 and 2018–19 (10%)
- s 47G – business: 6%; a 4% increase compared to 2020–21
- s 47C – deliberative processes: 6%; down from 10% in 2020–21
- s 38 – documents to which secrecy provisions apply: 5%; slightly less than in the 3 previous financial years (6%).

## 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 if it does not adequately identify the documents sought.

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

Table E.7 provides information about how agencies and ministers engaged in request consultation processes under s 24AB of the FOI Act in 2021–22 and the outcome of those processes.

Agencies sent 25% fewer notices of an intention to refuse an FOI request for a practical refusal reason in 2021–22 than in 2020–21, when 3,143 notices were sent. The reasons for this decrease included a decrease in the number of practical refusal notices issued by Home Affairs (1,230 notices in 2021–22, compared to 2,007 in 2020–21) and Services Australia (47 notices in 2021–22, compared to 132 in 2020–21, a 64% decrease). The Department of Defence (Defence) also issued significantly fewer notices (52 in 2021–22, compared to 101 in 2020–21, a 49% decrease).

Some agencies issued substantially more notices of an intention to refuse an FOI request for a practical refusal reason in 2021–22 than they did in 2020–21. For example, Health issued 171 notices in 2021–22, compared to 52 in 2020–21, a 229% increase. The NDIA issued 317% more notices in 2021–22 (50) compared to 2020–21 (when 12 were issued). Both agencies received substantially more FOI requests in 2021–22 than in the previous year (Health received 98% more and the NDIA received 107% more).

Table E.6: Use of exemptions in FOI decisions in 2021–22

FOI Act reference	Exemption	Personal	Other	Total	% of all exemptions applied
s 33	Documents affecting national security, defence or international relations	370	175	545	3
s 34	Cabinet documents	3	170	173	1
s 37	Documents affecting enforcement of law and protection of public safety	870	164	1,034	7
s 38	Documents to which secrecy provisions of enactments apply	675	125	800	5
s 42	Documents subject to legal professional privilege	196	211	407	3
s 45	Documents containing material obtained in confidence	42	235	277	2
s 45A	Parliamentary Budget Office documents	0	4	4	—*
s 46	Documents disclosure of which would be contempt of Parliament or contempt of court	14	4	18	—*
s 47	Documents disclosing trade secrets or commercially valuable information	30	242	272	2
s 47A	Electoral rolls and related documents	8	2	10	—*
s 47B	Commonwealth-state relations	107	78	185	1
s 47C	Deliberative processes	333	535	868	6
s 47D	Financial or property interests of the Commonwealth	217	18	235	1
s 47E	Certain operations of agencies	2,961	916	3,877	25
s 47F	Personal privacy	4,840	1,228	6,068	39
s 47G	Business	388	519	907	6
s 47H	Research	6	5	11	—*
s 47J	The economy	1	2	3	—*

\* Denotes a figure less than 1% when rounded to nearest whole number.

**Table E.7: Use of practical refusal in 2021–22**

Practical refusal processing step	Personal	Other	Total	%*
Notified in writing of intention to refuse request	1,278	1,075	2,353	–
Request was subsequently refused or withdrawn	646	635	1,281	54
Request was subsequently processed	632	440	1,072	46

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

Three agencies issued high proportions of notices of an intention to refuse a request as a percentage of all the FOI requests they decided during 2021–22. The Australian Securities and Investments Commission issued practical refusal notices for 44% of the FOI requests it decided in 2021–22; PM&C for 43%; and DFAT for 32%.

In 2021–22, 54% of the FOI requests subject to a notice of intention to refuse a request were subsequently refused or withdrawn. This is an increase compared to the proportion refused or withdrawn in 2020–21 (48%), but a decrease when compared to 2019–20 (57%) and 2018–19 (77%).

This higher proportion of FOI requests subsequently refused or withdrawn after a practical refusal notice is issued suggests that applicants may not have revised their FOI requests so they can be processed. It also raises the question whether applicants received sufficient assistance to revise the scope of their requests.

Home Affairs issued 52% of all notices of an intention to refuse a request for a practical refusal reason in 2021–22 (1,230 notices). It subsequently processed 623 or 51% of these requests (compared to 61% in 2020–21). However, it is noted that in 2019–20, Home Affairs only processed 46% of requests after issuing a notice of intention to refuse a request for a practical refusal reason.

For all other agencies, the percentage of FOI requests subsequently processed after a practical refusal notice was issued was 40% (36% in 2020–21 and 40% in 2019–20). This low rate indicates agencies' consultation with applicants has not always been successful in removing the practical refusal reason.

For example, some agencies subsequently processed proportionally fewer FOI requests after issuing a notice of an intention to refuse a request. These agencies included PM&C, which issued 76 notices and subsequently processed 14 requests (18%), NDIA (50 notices issued, 12 requests subsequently processed – 24%), the ATO (72 notices issued, 20 requests subsequently processed – 28%) and DFAT (72 notices issued, 24 requests subsequently processed – 31%).

## 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. There is no charge for giving access to an individual's own personal information. Charges can only be imposed for requests relating to 'other' (that is, non-personal) information.

Table E.8 shows the amounts collected by the 20 agencies that collected the most in charges under the FOI Act in 2021–22. These top 20 agencies are responsible for 93% of all charges collected by agencies and ministers under the FOI Act during the reporting period.

In 2021–22, agencies notified a total of \$272,928 in charges with respect to 923 FOI requests, but collected only \$75,537 (28% 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 request and not paying the notified charge. Three agencies notified total charges of over \$20,000 – Health (\$53,865), AAT (\$41,797) and the Department of Agriculture, Water and the Environment (DAWE) (\$22,557).

Table E.8: Top 20 agencies by charges collected in 2021–22

Agency	Requests received	Requests where charges notified	Total charges notified (\$)	Total charges collected (\$)
Department of Health	1,254	136	53,865	16,347
Department of Agriculture, Water and the Environment	176	81	22,557	10,315
Department of Education, Skills and Employment	185	49	17,933	7,819
Civil Aviation Safety Authority	86	27	8,407	4,039
Australian Pesticides and Veterinary Medicines Authority	28	18	6,169	3,635
Department of Home Affairs	14,644	318	10,158	3,360
Department of Industry, Science, Energy and Resources	189	29	5,957	3,066
Department of the Prime Minister and Cabinet	318	20	19,540	2,847
Department of Foreign Affairs and Trade	371	41	4,272	2,628
Australian Bureau of Statistics	34	2	2,827	2,387
Australian Trade and Investment Commission (Austrade)	28	5	2,261	2,144
Services Australia	4,627	44	10,626	2,047
Clean Energy Regulator	24	7	2,650	1,688
Australian Competition and Consumer Commission	49	10	2,652	1,319
Department of Infrastructure, Transport, Regional Development and Communications	225	15	4,982	1,297
Coal Mining Industry (Long Service Leave Funding) Corporation	4	1	1,125	1,125
Department of the Treasury	148	17	4,808	1,037
Tourism Australia	12	3	994	994
National Indigenous Australians Agency	25	16	9,848	989
Administrative Appeals Tribunal	1,505	4	41,797	954
<b>Top 20</b>	<b>23,932</b>	<b>843</b>	<b>233,428</b>	<b>70,037</b>
Remaining agencies	10,304	80	39,500	5,500
<b>Total</b>	<b>34,236</b>	<b>923</b>	<b>272,928</b>	<b>75,537</b>

Agencies notified more in charges in 2021–22 than in the previous year, but collected less than in 2020–21. Charges notified in 2021–22 (\$272,928) were 10% higher than in 2020–21, when \$247,572 was notified. In 2021–22, agencies collected \$75,537, 7% less than in 2020–21 when \$81,353 was collected. Total charges notified and total charges collected have declined year on year since 2013–14, when \$734,762 was notified and \$239,628 was collected.

## Time taken to respond to FOI requests

Under the FOI Act, agencies and ministers have 30 days to make a decision about an FOI request. The FOI Act allows for the timeframe to be extended in certain circumstances.<sup>3</sup>

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 should continue to process a request that has been deemed to be refused.

In 2021–22, 70% of all FOI requests determined were processed within the applicable statutory timeframe: 65% of all requests for personal information and 85% of all requests for non-personal information. This represents a significant reduction in the timeliness of decision making from 2020–21, when 77% of all requests were decided within time (76% of requests for personal information and 85% of requests for non-personal information). It is worth noting that 2020–21 was a year characterised by a decline in timeliness compared to previous years. For example, in 2019–20, 79% of all requests were decided within time, and in 2018–19 it was 83%.

The decline in overall timeliness in 2021–22 is the result of a significant reduction in the timeliness of processing requests for access to personal information. This decline in timeliness negatively impacts the rights of members of the public to access information,

including individuals seeking their own personal information.

There was a small improvement in the timeliness of processing of requests for non-personal information – 85% in 2021–22 compared to 84% in 2020–21.

The COVID-19 pandemic was viewed as a reason for some Australian Government agencies not being able to respond to FOI requests within statutory timeframes in 2019–20 and 2020–21. However, the impact of the pandemic may have played a lesser role in declining timeliness in 2021–22 than in the first 2 years of the pandemic.

Services Australia explains that in 2021–22, it redirected FOI staff to process claims to support the Australian Government's response to COVID-19 as well as Australian Government Disaster Recovery Payments, which impacted FOI processing timeframes.

Agencies have identified other factors impacting their ability to manage their FOI workloads in 2021–22. These include high staff turnover, difficulty recruiting staff (particularly experienced FOI practitioners), and the onboarding and training of new FOI staff who may be in other geographical locations. Another strong theme to emerge from agency comments is the increased complexity and volume in the FOI request caseload that is causing processing delays.

Some agencies decided fewer than 50% of FOI requests within the statutory timeframes in 2021–22. These agencies included Sport Integrity Australia (17% decided within statutory timeframes), the Northern Australia Infrastructure Facility (18%), the Treasurer (25%), the Office of the Prime Minister (26%) and Home Affairs (45%).

Because of the large number of FOI requests received by Home Affairs, it is worth noting that Home Affairs' compliance with statutory timeframes was 45% in 2021–22, which is well below the Australian Government average of 70%. This represents a decrease in timeliness compared to 2020–21 (62%), 2019–20 (66%) and 2018–19 (74%). Home Affairs

<sup>3</sup> 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 have been refused (ss 15AC and 51DA) or deemed to have been affirmed on internal review (s 54D). These extension provisions acknowledge 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 finalises the request within the extended time, the request is recorded as having been determined within the statutory timeframe.



decided only 41% of personal FOI requests within statutory timeframes, a decline in timeliness from 2020–21 (61%) and 2019–20 (69%). In 2021–22, Home Affairs decided 68% of non-personal FOI requests within statutory timeframes, which represents an improvement on 2020–21 (65%) and 2019–20 (37%).

Home Affairs advises that as part of its continuous improvement program, it balances its FOI resources more towards meeting the demand for non-personal information within statutory timeframes. This explains the improvement in timeliness for processing requests for non-personal information.

With respect to timeliness in processing requests for access to personal information, Home Affairs says the higher volume of these requests compared to the volume of requests that can be finalised using available resources contributed to an increasing proportion of requests for personal information on-hand and overdue.

There was an increase in the number of FOI requests decided more than 90 days over the applicable statutory period compared with previous years, to 19%. This compares with 12% in 2020–21, 10% in 2019–20, and 2% in 2018–19.

The main contributor to this increase was Home Affairs, which decided 4,701 requests more than 90 days late – 1,453 more than in 2020–21. Services Australia also contributed to the overall decline by deciding 49 requests more than 90 days late – when only 2 decisions were outside the statutory processing period in 2020–21.

Home Affairs advises that the FOI requests decided more than 90 days outside of statutory timeframes were predominantly requests for access to personal information. In 2021–22, Home Affairs targeted its resources to meeting the demand for non-personal information within statutory timeframes. As a result, finalising the higher proportion of overdue requests for personal information, including those overdue by 90 days or more, led to a higher proportion of requests for personal information being reported as finalised more than 90 days out of time.

A number of agencies that process large numbers of FOI requests (over 100) decided them all within the statutory time in 2021–22. These agencies include the IAA (277 requests decided), IP Australia (185), OAIC (163), the Department of Education, Skills and Employment (DESE) (111) and DAWE (105).

**Table E.9: FOI request response times 2020–21 and 2021–22**

Response time	2020–21				2021–22			
	Personal	Other	Total	%	Personal	Other	Total	%
Within applicable statutory timeframe	15,661	5,002	20,663	77	12,084	5,714	17,798	70
Up to 30 days over applicable statutory timeframe	1,005	532	1,537	6	1,018	703	1,721	7
31–60 days over applicable statutory timeframe	414	190	604	2	450	186	636	3
61–90 days over applicable statutory timeframe	474	90	564	2	258	66	324	1
More than 90 days over applicable statutory timeframe	3,170	142	3,312	12	4,747	77	4,824	19
<b>Total</b>	<b>20,724</b>	<b>5,956</b>	<b>26,680</b>	<b>99</b>	<b>18,557</b>	<b>6,746</b>	<b>25,303</b>	<b>100</b>

**Table E.10: Response times greater than 90 days after expiry of applicable statutory period in 2021–22**

Agency	Total requests decided	FOI requests decided more than 90 days after statutory period	Proportion of FOI requests decided by agency or minister (%)
Australian Institute of Aboriginal and Torres Strait Islander Studies	3	3	100
Department of Home Affairs	11,203	4,701	42
Office of the Prime Minister	43	8	19
Australian Commission for Law Enforcement Integrity	13	2	15
Department of Foreign Affairs and Trade	240	36	15
Airservices Australia	21	1	5
Australian Federal Police	482	14	3
Australian National University	52	1	2
Services Australia	2,479	49	2
Department of the Prime Minister and Cabinet	178	1	1
Department of Defence	429	3	1
Attorney-General's Department	237	1	–
Australian Taxation Office	562	1	–
Department of Health	980	1	–
Department of Veterans' Affairs	1,612	1	–
National Disability Insurance Agency	1,516	1	–

## Applications for amendment of personal records

Section 48 of the FOI Act confers a right on a person to apply to an agency or 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 2021–22, 11 agencies received 1,282 amendment applications (no applications were received by

ministers). This is a 56% increase in applications from 2020–21, when 820 amendment applications were received. This in turn follows a 14% increase in applications in 2020–21 compared to 2019–20, when 717 applications were received, and a 7% increase in 2019–20 over the previous year.

The increase in amendment applications is largely due to increases in applications received by Home Affairs (up 58% in 2021–22, compared to 2020–21) and Defence (up 41% compared to 2020–21). Some agencies also received amendment applications when they did not receive them the previous year, such as the AAT, the ATO, the Department of Finance (Finance) and Health.

Table E.11 compares the decision making for amendment applications during the reporting period with that of 2020–21. In 2021–22, a decision was made to amend or annotate a person's personal record in 91% of all decided applications; in 2020–21, it occurred in 88% of decisions. As Home Affairs accounted for 93% of all amendment applications received, overall trends in amendment decision making are largely determined by decisions made by that department (which decided to amend or annotate personal records in 93% of the applications it decided).

## 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 day the request is received, or a longer period as extended under the FOI Act.

In 2021–22, 91% of all amendment applications were decided within the applicable statutory timeframe, slightly higher than in 2020–21 and 2019–20 when 90% were decided within time.

## Internal review of amendment decisions

In 2021–22, 11 applications for internal review of amendment decisions were made (8 fewer than in 2020–21, when 19 applications were made). Of these, 9 applications were made to Home Affairs, one to Defence and one to the OAIC. Nine internal review decisions were made during the reporting year, compared to 20 in 2020–21. Of these, 5 decisions granted the requested amendment or annotation (56%) and 4 decisions were made refusing the requested alteration (44%). In 2020–21, 14 reviews granted the requested alteration or annotation (70%) and 6 refused the requested alteration (30%).

**Table E.11: Decisions on amendment applications**

Decision	2020–21	% of total	2021–22	% of total	% change*
Applications granted: amend record	598	77	1,023	83	71
Applications granted: annotate record	83	11	94	8	13
Applications granted: amend and annotate record	0	0	2	0	—†
Applications refused	93	12	107	9	15
<b>Total decided</b>	<b>774</b>	<b>100</b>	<b>1,226</b>	<b>100</b>	<b>99</b>

\* Percentage increase or decrease compared with 2020–21.

† Less than 1% when rounded to nearest whole number.

## Disclosure logs

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.

Australian Government agencies reported 2,647 new entries on disclosure logs during 2021–22. This included 2,090 new entries for which documents are available for download directly from the agency's or minister's website (79% of all new disclosure log entries), 38 new entries for which documents are available from another website (1% of all new entries), and 519 new entries for which the documents are available by another means, usually upon request (20% of all new listings).

The total number of new entries published on disclosure logs in 2021–22 is 7% higher than 2020–21, when 2,480 new entries were added. This increase is significant given there was a 5% reduction in the number of FOI requests decided in 2021–22.

There was a decrease in the proportion of new documents that members of the public can access directly from agency websites: 79% in 2021–22, compared to 83% in 2020–21. However, more documents were made directly available to the public when compared to 2019–20, when only 75% of all new entries were made available in this way.

In September 2021, the OAIC published the Disclosure log desktop review based on a review of 38 agency disclosure logs in October 2019, with a further review of the same agencies' disclosure logs in March 2021 to allow for a longitudinal review of compliance. These reviews found:

- Most agencies are largely compliant with their disclosure log obligations.
- Some agencies require members of the public to contact them for access to documents on their disclosure logs.
- Some agencies do not provide a clear description of the released documents, which makes it difficult

for members of the public to search for and identify what the documents contain and whether to request access.

Part 14 of the FOI Guidelines (Disclosure Log) was updated in March 2022. Part 14.7 emphasises the Information Commissioner's better practice view that all documents released in response to an FOI request should be made available for download from the agency's or minister's disclosure log or another website, unless it is not possible to upload documents due to technical impediments, such as the size of the file or the need for specialist software to view the documents. The Information Commissioner considers this approach to be consistent with the objects of the FOI Act, which include that functions and powers under the Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

Some agencies that added more than 10 new entries to their disclosure log in 2021–22 made all released documents available for direct download from the agency's website, or from another website. These agencies include Health (120), DISER (96), the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) (81), DAWE (76), DFAT (50), the AFP (39), The Treasury (35), the ATO (31), the Australian Communications and Media Authority (30), Finance (20), the OAIC (20), the Future Fund Management Agency (16), the Department of Social Services (13), the Gene Technology Regulator (11), Norfolk Island Regional Council (11) and the Office of the eSafety Commissioner (11).<sup>4</sup>

In 2021–22, agencies and ministers reported a total of 77,954 unique visitors to disclosure logs and 210,452 page views, which represents a 47% increase in unique visitors since 2020–21, and a 66% decrease in total page views compared with 2020–21. The substantial decrease in total page views is largely due to decreases in page views reported by DITRDC (2,074 in 2021–22, compared with 610,187 in 2020–21) and Home Affairs (163,333 in 2021–22, compared with 230,565 in 2020–21). Last year's annual report noted that in some instances, an abnormally high number of page views can be caused by non-human ('bot') traffic.

<sup>4</sup> Home Affairs made documents directly available for download by the public with respect to 1,084 of the 1,085 new entries to its disclosure log in 2021–22.

Review of FOI decisions

Under the FOI Act, an applicant who is dissatisfied with the decision of an agency or minister on their initial FOI request has a number of avenues of review. The applicant can seek internal review with the agency or minister (except if the FOI request is deemed to have been refused because a decision has not been made within the statutory timeframe) or external merits review by the Information Commissioner (IC review). Information Commissioner decisions under s 55K are reviewable by the AAT. AAT decisions may be appealed on a question of law to the Federal Court. In addition, an applicant can complain at any time to the Information Commissioner about an agency’s actions under the FOI Act.

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 obligation to do so, the Information Commissioner recommends and encourages FOI applicants to apply for an internal review before applying for IC review.

In 2021–22, 954 applications were made for an internal review of FOI decisions, 7% less than in 2020–21 (when 1,026 internal review applications were made). In 2021–22, 4% of all FOI requests determined led to applications for internal review, the same proportion as in 2020–21 and slightly more than in 2019–20 when it was 3%.

The decline in internal review applications in 2021–22 was driven by a 62% decrease in applications to Home Affairs (which received 116 internal review applications, down from 312 the previous year). Home Affairs attributes this decrease to an increase in non-personal FOI requests being granted in full and the high proportion of personal FOI requests being decided outside statutory timeframes (an applicant cannot seek internal review of a decision made outside the statutory timeframe).

Of the 954 applications for an internal review, 328 (34%) were for review of decisions made in response

to requests for personal information and 626 (66%) were for review of decisions on other information requests. On the basis that 73% of all FOI decisions made in 2021–22 related to requests for access to personal information (and 45 of those requests were granted in full), this indicates that FOI applicants seeking access to personal information are less likely to seek internal review than those seeking to access ‘other’ (non-personal) information.

Agencies finalised 965 decisions on internal review in 2021–22, almost the same number as in 2020–21 (968). Of these:

- 565 (59%) affirmed the original decision
- 87 (9%) set aside the original decision and granted access in full
- 203 (21%) granted access in part
- 30 (3%) granted access after deferment
- 7 (1%) granted access in another form
- 16 (2%) resulted in lesser access
- 40 (4%) were withdrawn by applicants without concession by the agency
- 17 (2%) reduced the charges levied.

IC review applications

Table E.12 provides a breakdown by agency of IC review applications received in 2021–22. In total, there were 1,995 applications for IC review (up 63% from 1,224 in 2020–21). This represents a substantial increase in the number of IC reviews received by the OAIC and the largest yearly increase since the OAIC was established in 2010. One of the causes of this significant increase was a large increase in IC review applications relating to decisions deemed to have been refused by Home Affairs because statutory timeframes had not been met. Of the 1,022 review applications made in which Home Affairs was the respondent in 2021–22, 885 involved deemed access refusals.

As has been stated in past annual reports, it is generally the agencies receiving the most FOI requests that have the most IC review applications lodged against their decisions. In 2021–22, 16 of the 20 agencies in Table E.12 (the top 20 by IC reviews received) are also in the top 20 agencies for the number of FOI requests received.

Table E.12: Top 20 agencies by IC review applications received

Agency/minister	FOI requests received	Access grant applications	Access refusal applications	Total IC review applications	% of FOI requests
Department of Home Affairs	14,644	6	1,016	1,022	7
Services Australia	4,627	–	116	116	3
Department of Health	1,254	1	62	63	5
National Disability Insurance Agency	1,884	1	53	54	3
Australian Federal Police	492	1	51	52	11
Department of Defence	530	–	50	50	9
Department of Foreign Affairs and Trade	371	–	50	50	13
Department of Veterans' Affairs	1,785	–	42	42	2
Department of Industry, Science, Energy and Resources	189	1	30	31	16
Department of the Prime Minister and Cabinet	318	–	25	25	8
Australian Taxation Office	804	–	24	24	3
Office of the Australian Information Commissioner	307	–	24	24	8
Federal Court of Australia	95	–	23	23	24
Department of Infrastructure, Transport, Regional Development and Communications	225	–	21	21	9
Australian Securities and Investments Commission	283	2	18	20	7
Commonwealth Ombudsman	152	–	18	18	12
Administrative Appeals Tribunal	1,505	–	18	18	1
Attorney-General's Department	278	–	15	15	7
Department of Social Services	163	–	15	15	9
Australian Public Service Commission	96	–	12	12	13
<b>Subtotal</b>	<b>30,002</b>	<b>12</b>	<b>1,683</b>	<b>1,695</b>	<b>6</b>
Remaining agencies/ministers	4,234	11	249	300	1
<b>Total</b>	<b>34,236</b>	<b>23</b>	<b>1,932</b>	<b>1,995</b>	<b>6</b>

However, some agencies in Table E.12 have comparatively few IC review applications lodged against their decisions when expressed as a percentage of the total number of FOI requests they receive. These agencies include Services Australia (3%), the NDIA (3%), the ATO (3%), Veterans' Affairs (2%) and the AAT (1%). These agencies all receive a large proportion of FOI requests seeking access to personal information and, with the exception of the ATO, have proportionally low access refusal rates.

Some agencies are the subject of a comparatively large number of IC review applications when expressed as a percentage of the total FOI requests they receive. These agencies include the Federal Court of Australia (24%), DISER (16%), the Australian Public Service Commission (APSC) (13%), DFAT (13%), the Commonwealth Ombudsman (12%) and the AFP (11%). With the exception of the Commonwealth Ombudsman and AFP, these agencies are characterised by higher proportions of 'other' (non-personal) FOI requests, which are generally accepted as being more complex and more likely to be subject to a wider range of exemptions under the FOI Act.

There was a 37% increase in the number of IC reviews finalised by the OAIC in 2021–22 (1,392), compared to 2020–21 (when 1,018 were finalised).

In 2021–22, 1,289 IC reviews (93% of the total) were finalised without a formal decision being made under s 55K of the FOI Act. This compares to 95% in 2020–21, 94% in 2019–20 and 91% in 2018–19.

In 2021–22, 190 IC reviews were declined under s 54W(a) (lacking in substance, failure to cooperate or lost contact) compared to 117 in 2020–21. There were 69 IC reviews declined under s 54W(b) (decision to be considered by the AAT) compared to 139 in 2019–20. The total number of IC review applications declined under s 54W<sup>5</sup> of the FOI Act fell as a percentage of all IC reviews finalised: in 2021–22, 259 IC reviews were declined (19% of the total) compared to 25% in 2020–21, 31% in 2019–20 and 30% in 2018–19.

In total, 659 IC reviews were closed under s 54R as withdrawn, an increase from 266 in 2020–21. Of these, 479 were finalised following a revised decision to provide access under s 55G of the FOI Act. Of the 479 IC reviews finalised under s 54R, 445 involved a deemed access refusal decision.

Of the 1,392 IC review applications finalised in 2021–22, 4% were declined under s 54W(a)(i) (frivolous, vexatious, misconceived, lacking in substance or not made in good faith), 9% were declined under s 54W(a)(ii) (failure to cooperate), 1% were finalised under s 54W(a)(iii) (lost contact), and 5% under s 54W(b) (allow to go direct to the AAT).

In 2021–22, the Information Commissioner, acting FOI Commissioner and FOI Commissioner together made 103 decisions under s 55K of the FOI Act. In 57 decisions (55%), they affirmed the decision under review; in 36 (35%) they set aside the reviewable decision; and in 10 (10%) they varied the decision. Of the 57 decisions that affirmed the decision under review, 54 (95%) were access refusals and 3 were access grants. In 2020–21, the Information Commissioner affirmed 46% of decisions, set aside 41% and varied 13%.

Ten of the decisions affirmed (18%) had been revised by the agency or minister under s 55G of the FOI Act during the IC review to give greater access to the documents sought. This was also the case with 14 of the 36 decisions that were set aside (39%) and 2 of the 10 varied decisions (20%).

The percentage of applications received by the OAIC that were out of jurisdiction or invalid decreased from 28% of all applications in 2020–21 to 23% in 2021–22.

<sup>5</sup> 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.



**Table E.13: Information Commissioner review outcomes**

Information Commissioner decisions	2020–21	% of 2020–21 total	2021–22	% of 2021–22 total
Section 54N – out of jurisdiction or invalid	285	28	314	23
Section 54R – withdrawn	266	26	659	47
Section 54R – withdrawn/conciliated	143	14	39	3
Section 54W(a)(i) – frivolous, vexatious, misconceived, lacking in substance, or not in good faith	61	6	50	4
Section 54W(a)(ii) – failure to cooperate	51	5	131	9
Section 54W(a)(iii) – lost contact	5	–*	9	1
Section 54W(b) – refer AAT	139	14	69	5
Section 54W(c) – failure to comply	–	–	–	–
Section 55F – set aside by agreement	1	–*	1	–*
Section 55F – varied by agreement	13	1	5	–*
Section 55F – affirmed by agreement	–	–	–	–
Section 55G – substituted	–	–	–	–
Section 55K – affirmed by IC	25	3	57	4
Section 55K – set aside by IC	22	2	36	3
Section 55K – varied by IC	7	1	10	1
Section 89M(2)(b) – refuse to consider	–	–	12	1
<b>Total</b>	<b>1,018</b>	<b>100</b>	<b>1,392</b>	<b>100</b>

\* Denotes a figure of less than 1% when rounded to nearest whole number.

## Administrative Appeals Tribunal review

An application can be made to the AAT for review of the following FOI decisions:

- a decision of the Information Commissioner under s 55K
- 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 directly.

In 2021–22, 58 applications for review of FOI decisions were made to the AAT. This is a 19% decrease from 2020–21, when 72 applications were made to the AAT.

Table E.14 provides a breakdown, by agency, of applications to the AAT in relation to FOI decisions in 2021–22. This data has been provided by the AAT.

In 2021–22, 4 agencies sought review in the AAT of decisions made by the Information Commissioner under s 55K of the FOI Act. The AFP, DAWE, Veterans' Affairs and Services Australia each made one application.

Ninety-five applications remained outstanding with the AAT at the end of 2021–22. This is an 8% decrease on the number of applications outstanding at the end of 2020–21 (103).

Table E.15 shows the outcome of the 66 FOI reviews finalised by the AAT in 2021–22, compared to the previous reporting year. The AAT provided this data.

Of the 66 FOI reviews finalised by the AAT, 25 (33%) resulted in written decisions in 2021–22. The AAT affirmed the decision under review in 17 of the 25 decisions (68%), while 8 were varied or set aside (32%).

Three of the 66 reviews finalised by the AAT in 2021–22, involved applications made by agencies against decisions made by the Information Commissioner under s 55K of the FOI Act. One of the decisions under review was affirmed, one was varied/set aside, and one was withdrawn.

**Table E.14: AAT review by agency (respondent)**

Respondent	Applications
National Disability Insurance Agency	11
Office of the Australian Information Commissioner	9
Services Australia	5
Department of Home Affairs	4
Department of Foreign Affairs and Trade	3
Australian Prudential Regulation Authority	2
Australian Taxation Office	2
Department of Agriculture, Water and the Environment	2
Department of Veterans' Affairs	2
Department of the Treasury	2
Administrative Appeals Tribunal	1
Attorney-General's Department	1
Australian Federal Police	1
Australian Sports Commission	1
Bureau of Meteorology	1
Comcare	1
Department of Defence	1
Department of Finance	1
Department of Health and Aged Care	1
Minister for Department of Home Affairs	1
Office of the Prime Minister of Australia	1
Sport Integrity Australia	1
Other (appeals by agencies against IC review decisions)	4
<b>Total</b>	<b>58</b>

**Table E.15: Outcomes of FOI reviews finalised by the AAT**

AAT outcomes	Number in 2020–21	% of total 2020–21	Number in 2021–22	% of total 2021–22
Affirmed by consent	–	–	–	–
Varied/set aside/remitted by consent	3	7	5	8
Dismissed by consent	2	4	19	29
Withdrawn by applicant	21	46	10	15
Decision affirmed	3	7	17	26
Decision varied/set aside	6	13	8	12
Dismissed by AAT – frivolous or vexatious/fail to comply with direction	–	–	–	–
Dismissed – no application fee paid	–	–	–	–
Dismissed – non-reviewable decision	11	24	7	11
<b>Total</b>	<b>46</b>	<b>101*</b>	<b>66</b>	<b>101*</b>

## 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 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 IPS. To facilitate comparison with 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 2021–22 was \$64.56 million, a 5% increase over the previous financial year's total of \$61.48 million. This reverses the 4% decrease in total costs attributable

to processing FOI requests in 2020–21. In previous reporting years, there were year-on-year increases in costs attributable to processing FOI requests. For example, in 2019–20, there was a 7% increase over the previous financial year's total of \$59.9 million.

The 5% increase in total costs occurs in the context of a 2% decrease in the number of FOI requests received by Australian Government agencies in 2021–22 and a 5% decrease in the number of FOI requests decided. The increase in the total cost of administering FOI is the result of a significant increase in non-labour costs.

The total staff hours devoted to FOI was very much the same in 2021–22 (851,290 hours) as it was in 2020–21 (855,498 hours), which is less than a 1% decrease in hours worked.

The average staff days for each FOI request received in 2021–22 was the same as in 2020–21: 3.3 days.

Despite this, in 2021–22, the average cost for each request decided was \$2,551 compared with \$2,305 in 2020–21, an 11% increase. As noted above, the increase in FOI processing costs is the result of

non-labour costs associated with FOI work (see Table E.19).

Table E.16 sets out the average cost per FOI request determined (granted in full or in part, or refused) for the past 5 years.

**Table E.16: Average cost per request determined**

Year	Requests determined	Total cost (\$)	Average cost per request determined (\$)
2021–22	25,303	64,559,530	2,551
2020–21	26,680	61,484,795	2,305
2019–20	29,358	63,906,111	2,177
2018–19	30,144	59,844,953	1,985
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 E.17: Total FOI staffing across all Australian Government agencies**

Staffing	2018–19	2019–20	2020–21	2021–22	% change*
Total staff hours	840,803	893,564	855,498	851,290	–†
Total staff years	420.4	446.8	427.75	425.65	–†

\* Percentage change from 2020–21 to 2021–22.

† Percentage involves a less than 1% decline in total staff hours.

Agencies provide estimates of the number of staff hours spent on FOI to enable the calculation of salary costs (and additional 60% related costs, which cover overheads such as computers, electricity and stationery), directly attributable to FOI request processing.

A summary of staff costs is provided in Table E.18, based on information provided by agencies and ministers, and calculated using the following median base annual salaries from APSC public information:<sup>6</sup>

- FOI contact officer (officers whose duties included FOI work) – \$82,059<sup>7</sup>
- other officers involved in processing requests:
  - Senior Executive Service (SES) officers (or equivalent) – \$211,395<sup>8</sup>
  - Australian Public Service (APS) level 6 and executive levels (EL) 1 to 2 – \$119,651<sup>9</sup>
  - APS levels 1 to 5 – \$66,563<sup>10</sup>
- minister's office:
  - minister and advisers – \$148,315<sup>11</sup>
  - minister's support staff – \$66,563.<sup>12</sup>

Total estimated staff costs in 2021–22 were \$60.56 million, 3% more than in 2020–21. However, in 2020–21, there was a 5% decrease in total estimated staff costs compared to the previous year, so this year's estimated staff costs are still less than those reported in 2019–20 (\$61.7 million).

While there was a significant decrease in staff costs associated with ministers' support staff, and a smaller decrease in costs for APS level 1 to 5 staff, this was offset by the significant increase in SES costs in 2021–22.

<sup>6</sup> Because salary levels differ between agencies, median salary levels have been used. These were published by the Australian Public Service Commission in its APS Remuneration Report 2021. These median levels are as at 31 December 2021.

<sup>7</sup> APS Level 5 base salary median.

<sup>8</sup> SES Band 1 base salary median.

<sup>9</sup> EL1 base salary median.

<sup>10</sup> APS 3 base salary median.

<sup>11</sup> EL 2 base salary median.

<sup>12</sup> APS 3 base salary median.

**Table E.18: Estimated staff costs for FOI work in 2021–22 compared to 2020–21**

Type of staff	Staff years 2020–21	Total staff costs 2020–21 (\$)	Staff years 2021–22	Total staff costs 2021–22 (\$)	Total staff costs (% change)
FOI contact officers	318.4	40,616,061	317.7	41,716,761	3
SES	13.7	4,453,306	15.6	5,272,868	18
APS 6 and EL 1–2	43.3	8,018,880	42.5	8,142,873	2
APS 1–5	50.9	5,315,641	48.5	5,165,715	–3
Minister and advisers	1.0	225,714	1.0	228,524	1
Minister's support staff	0.5	47,621	0.3	34,027	–29
<b>Total</b>	<b>427.8</b>	<b>58,677,223</b>	<b>425.6</b>	<b>60,560,767</b>	<b>3</b>

## Non-labour costs

Non-labour costs directly attributable to FOI are summarised in Table E.19, including the percentage change from the previous financial year.

The total non-labour costs in 2021–22, were \$4 million,<sup>13</sup> which is 42% higher than the previous financial year (\$2.8 million).

The most significant increases in non-labour costs in 2021–22 relate to legal costs, in particular, litigation costs (up 66% on the previous year), but also general legal advice costs (up 30% on 2020–21). 'Other'<sup>14</sup> costs increased 29% in 2021–22 compared to 2020–21.

The high litigation costs were incurred primarily by Services Australia (\$341,353, up from \$65,673 in 2020–21 – a 420% increase), Home Affairs (\$258,654, up from \$118,715 in 2020–21 – an 118% increase), the NDIA (\$186,638, up from \$95,529 in 2020–21 – a 95% increase), the ATO (\$161,461, up from \$11,569 in 2020–21 – a 1,296% increase), PM&C (\$159,802, up from \$104,797 – a 52% increase), DAWE (\$156,783, up from \$44,918 in 2020–21 – a 249% increase) and AGD (\$133,474, up from \$28,940 in 2020–21 – a 361% increase).

PM&C advises that its increased litigation costs in 2021–22 are the result of a matter in the AAT, while DAWE says it experienced an increase in AAT appeals in 2021–22.

Data provided by the AAT (Table E.14) indicates that some of these legal and litigation expenses may be partly due to new applications relating to FOI decisions in 2021–22.

The High Court of Australia, although incurring high litigation costs in 2021–22 (\$160,243), had a 37% decrease in litigation costs compared to 2020–21 (\$256,180).

Training costs reflect training provided to new FOI staff and ongoing training for existing staff. Training costs were \$293,624 in 2021–22, which was 6% higher than in 2020–21 (a year in which training costs increased by 64%).

Four agencies accounted for 70%<sup>15</sup> of the training costs incurred in 2021–22: Defence (\$154,175 – 53% of the total amount spent on FOI training during the year), AEC (\$25,000 – 9% of the total training spend), Home Affairs (\$13,737 – 5% of the total) and the Australian Broadcasting Corporation (ABC) (\$12,671 – 4% of the total).

<sup>13</sup> \$3,998,764.

<sup>14</sup> Other costs include costs not included in the other reporting categories.

<sup>15</sup> Due to rounding, percentages in this paragraph total 71%.

Defence explains that in 2021–22 it invested more in training new and existing accredited FOI decision makers and staff processing FOI requests as part of their duties. The department says this has resulted in more efficient processing of FOI requests due to a better understanding of the FOI Act.

The AEC said that its increased expenditure on training reflects the engagement of new staff, as well as training undertaken in response to OAIC recommendations. The ABC states that in 2021–22 it prioritised internal FOI training and the costs reported reflect external fees incurred.

As can be seen from Table E.19, there was a 3% decrease in ‘other’ general administrative costs, such as printing and postage, in 2021–22. General administrative costs in 2020–21 were 31% less than the previous year. Decreases in expenditure for this category may reflect a general decline in the number of people requiring documents to be printed and sent to them, increased efficiencies in the use of digital technology and the greater use of digital communication due to movement restrictions imposed by the COVID-19 pandemic.

‘Other’ costs increased 29% in 2021–22 compared to the previous year. However, it appears that in some instances agencies have incorrectly entered

expenditure on contractors performing FOI functions against this category instead of including this expenditure as staff costs.

## Average cost per FOI request

The average number of staff days for each FOI request received in 2021–22 was 3.3 days, which is the same as in 2021–22, but higher than the average of 2.9 days in 2019–20.

As in previous years, the average staff days per FOI request differed significantly across agencies, from 0.013 (the Australian Charities and Not-for-Profits Commission and the Office of the Official Secretary to the Governor-General) to 24 days (National Archives of Australia).

In the previous reporting period, Defence had the highest average staff days per request (19), but this year that figure has reduced to 14 days on average. Defence advises that it revised how it calculates the number of staff hours taken to process FOI requests, which has resulted in a significant decrease in the estimated hours spent by officers whose duties do not include FOI work.

The overall average cost per request received was \$1,886, a 7% increase on the previous financial year’s average of \$1,766.

**Table E.19: Identified non-labour costs of FOI in 2021–22 compared to 2020–21**

Costs	2018–19	2019–20	2020–21	2021–22	% change from 2020–21 to 2021–22
General legal advice costs	1,517,125	719,718	834,454	1,087,999	30
Litigation costs	414,635	911,551	1,254,301	2,077,876	66
<i>Total legal costs</i>	<i>1,931,760</i>	<i>1,631,269</i>	<i>2,088,755</i>	<i>3,165,875</i>	<i>52</i>
General administrative costs	144,140	136,634	94,678	91,920	–3
Training	385,745	168,339	276,042	293,624	6
Other	263,206	242,585	348,097	447,345	29
<b>Total</b>	<b>2,724,851</b>	<b>2,178,827</b>	<b>2,807,572</b>	<b>3,998,764</b>	<b>42</b>

The average cost per request received also differed significantly across agencies, from \$7 (Australian Charities and Not-for-Profits Commission) to \$32,387 (the High Court of Australia).

Generally, the agencies with the highest average cost per request are small agencies that do not receive many FOI requests. As a result, they do not have the opportunity to develop the processing efficiencies that agencies with higher volumes of FOI requests do.

## 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.

The total reported cost attributable to compliance with the IPS in 2021–22 was \$979,011, 1% less than in 2020–21 (\$990,278). It is worth noting that the

total reported cost attributable to IPS compliance in 2020–21 was 20% less than the previous year.

## Staff costs

Table E.21 shows the total reported IPS staffing across Australian Government agencies compared to last year.

**Table E.21: Total IPS staffing 2020–21 and 2021–22**

Staffing	2020–21	2021–22	% change
Staff numbers: 75–100% time on IPS matters	5	7	40
Staff numbers: less than 75% time on IPS matters	223	275	23
Total staff hours	14,879	14,575	–2
Total staff years	7.4	7.3	–1

**Table E.20: Agencies with average cost per FOI request greater than \$10,000**

Agency	Requests received	Average cost per request (\$)
High Court of Australia	5	32,387
Northern Australian Infrastructure Facility	4	15,066
Professional Services Review	5	14,682
Sport Integrity Australia	10	13,880
Australian Nuclear Science and Technology Organisation	4	13,476
National Museum of Australia	2	12,982
Export Finance and Insurance Corporation	2	12,509
National Archives of Australia	13	12,215
Australian Transport Safety Bureau	19	12,077
Office of the Registrar of Indigenous Corporations	6	11,968
Grains Research and Development Corporation	3	10,656



Table E.22: Estimated staff costs in relation to the IPS in 2021–22

Type of staff*	Staff years	Salary costs	Related costs (60%)	Total staff costs
IPS contact officers	6.8	358,092	537,139	895,231
SES	0.03	3,721	5,581	9,301
APS 6 and EL 1–2	0.2	14,128	21,193	35,321
APS 1–5	0.3	10,948	16,422	27,371
Total	7.3	386,890	580,334	967,224

\* IPS contact officers are officers whose usual duties include IPS work. The other rows cover other officers involved in IPS work.

Non-labour IPS costs

Reported IPS non-labour costs for all agencies totalled \$11,787 in 2021–22, a 197% increase compared to 2020–21, when this was \$3,973. Only 5 agencies (of the more than 250 agencies required to maintain an IPS entry) reported any expenditure on their IPS during 2021–22.

Three agencies reported a total of \$665 on general administrative costs associated with IPS compliance. No agencies reported any expenditure on general legal advice, litigation, or ‘other costs’ associated with their IPS. Three agencies reported expenditure on IPS training – the Productivity Commission (\$7,162), the Office of the Official Secretary to the Governor-General (\$2,200) and IP Australia (\$1,760).

## Appendix F: Shortened forms

Shortened form	Expanded term
AAO	Administrative Arrangements Order
AASB	Australian Accounting Standards Board
AAT	Administrative Appeals Tribunal
ABC	Australian Broadcasting Corporation
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACCCE	Australian Centre to Counter Child Exploitation
ACT	Australian Capital Territory
ADJR Act	<i>Administrative Decisions (Judicial Review) Act 1977</i>
AEC	Australian Electoral Commission
AFP	Australian Federal Police
AGD	Attorney-General's Department
AGS	Australian Government Solicitor
AHRC	Australian Human Rights Commission
AIAC	Association of Information Access Commissioners
AIC Act	<i>Australian Information Commissioner Act 2010</i>
AICmr	Australian Information Commissioner
APP	Australian Privacy Principle
APPA	Asia Pacific Privacy Authorities
APS	Australian Public Service
APSC	Australian Public Service Commission
ATO	Australian Taxation Office
AustLII	Australasian Legal Information Institute

Shortened form	Expanded term
Australian Government Agencies Privacy Code	Privacy (Australian Government Agencies – Governance) Code 2017
CDR	Consumer Data Right
CDR Rules	Competition and Consumer (Consumer Data Right) Rules 2020
CII	Commissioner-initiated investigation
COAG	Council of Australian Governments
CSS	Commonwealth Superannuation Scheme
Defence	Department of Defence
DESE	Department of Education, Skills and Employment
DEW	Department for Environment and Water (South Australia)
DFAT	Department of Foreign Affairs and Trade
DISER	Department of Industry, Science, Energy and Resources
DITRDC	Department of Infrastructure, Transport, Regional Development and Communications
DP-REG	Digital Platform Regulators Forum
EA	Enterprise Agreement
EDR scheme	External dispute resolution scheme
EL	Executive Level
EOT	extension of time
EU	European Union
Finance	Department of Finance
FOI	freedom of information
FOI Act	<i>Freedom of Information Act 1982</i>
FOI Commissioner	Freedom of Information Commissioner
FRR	Public Governance, Performance and Accountability (Financial Reporting) Rule 2015
FTE	full-time equivalent

Shortened form	Expanded term
GPA	Global Privacy Assembly
GPEN	Global Privacy Enforcement Network
GST	Goods and Services Tax
Health	Department of Health
Home Affairs	Department of Home Affairs
IC	Information Commissioner
ICO	UK Information Commissioner's Office
ICON	Information Contact Officers Network
ICT	Information and communications technology
IEWG	International Enforcement Working Group
Information Commissioner	Australian Information Commissioner, within the meaning of the <i>Australian Information Commissioner Act 2010</i>
IAID	International Access to Information Day
IPS	Information Publication Scheme
KC	King's Counsel
KMP	key management personnel
MOU	memorandum of understanding
NCSRA	National Cancer Screening Register Act
NDB	Notifiable Data Breaches
NDB scheme	Notifiable Data Breaches scheme
NDIA	National Disability Insurance Agency
OAIC	Office of the Australian Information Commissioner
OCF	OAIC Consultation Forum
ODC	OAIC Diversity Committee
PAW	Privacy Awareness Week

Shortened form	Expanded term
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	Public Governance, Performance and Accountability Rule 2014
PIA	privacy impact assessment
PM&C	Department of Prime Minister and Cabinet
PNR	passenger name record
Privacy Act	<i>Privacy Act 1988</i>
PSS	Public Sector Superannuation Scheme
PSSap	Public Sector Superannuation Scheme accumulation plan
RAC	Regulatory Action Committee
RDR	reduced disclosure requirements
ROU	right of use
SDO	Service Delivery Office
SES	Senior Executive Service
TAP	Talking about performance
Telecommunications Act	<i>Telecommunications Act 1997</i>
TPP	Territory Privacy Principle
TSRA	Torres Strait Regional Authority
Veterans' Affairs	Department of Veterans' Affairs
WHS Act	<i>Work Health and Safety Act 2011</i>

## Appendix G: Correction of material errors

The errors to be corrected in the *Office of the Australian Commissioner Annual Report 2020–21* are listed below.

1. On page 73, in Figure 3.1: OAIC workforce, the number of staff '136' is replaced by '138'.
2. On page 74, Table 3.2 is deleted and replaced with:

Classification	Male	Female	Full time	Part time	Casual	Ongoing	Non-ongoing	Total
Statutory office holder	0	1	1	0	0	0	1	1
SES 2	0	1	1	0	0	1	0	1
SES 1	2	1	3	0	0	1	2	3
EL 2 (\$125,218–\$142,904)	4	19	14	8	1	20	3	23
EL 1 (\$107,804–\$115,318)	15	26	34	6	0	32	8	40
APS 6 (\$85,541–\$94,197)	10	29	31	8	0	35	4	39
APS 5 (\$77,575–\$82,011)	6	21	25	2	0	22	5	27
APS 4 (\$69,583–\$73,935)	1	0	2	0	0	1	1	2
APS 2 (\$54,584–\$58,911)	0	2	0	2	0	0	2	2
<b>Total</b>	<b>38</b>	<b>100</b>	<b>111</b>	<b>26</b>	<b>1</b>	<b>112</b>	<b>26</b>	<b>138</b>

## Appendix H: List of requirements

PGPA Rule Reference	Description	Requirement	Page number
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 s 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	2
<b>17AD(a)</b>	<b>Aids to access</b>		
17AJ(a)	Table of contents	Mandatory	3
17AJ(b)	Alphabetical index	Mandatory	173
17AJ(c)	Glossary of abbreviations and acronyms	Mandatory	162
17AJ(d)	List of requirements	Mandatory	167
17AJ(e)	Details of contact officer	Mandatory	1
17AJ(f)	Entity's website address	Mandatory	1
17AJ(g)	Electronic address of report	Mandatory	1
<b>17AD(a)</b>	<b>Review by accountable authority</b>		
17AD(a)	A review by the accountable authority of the entity.	Mandatory	8
<b>17AD(b)</b>	<b>Overview of the entity</b>		
17AE(1)(a)(i)	A description of the role and functions of the entity.	Mandatory	7
17AE(1)(a)(ii)	A description of the organisational structure of the entity.	Mandatory	15
17AE(1)(a)(iii)	A description of the outcomes and programmes administered by the entity.	Mandatory	7
17AE(1)(a)(iv)	A description of the purposes of the entity as included in corporate plan.	Mandatory	7
17AE(1)(aa)(i)	Name of the accountable authority or each member of the accountable authority	Mandatory	15
17AE(1)(aa)(ii)	Position title of the accountable authority or each member of the accountable authority	Mandatory	15



PGPA Rule Reference	Description	Requirement	Page number
17AE(1)(aa)(iii)	Period as the accountable authority or member of the accountable authority within the reporting period	Mandatory	119
17AE(1)(b)	An outline of the structure of the portfolio of the entity.	Portfolio departments – mandatory	15
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	Not applicable
<b>17AD(c)</b>	<b>Report on the performance of the entity</b>		
	<i>Annual performance statement</i>		
17AD(c)(i); 16F	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and s 16F of the Rule.	Mandatory	21
17AD(c)(ii)	<i>Report on financial performance</i>		
17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory	76
17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	115
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	Not applicable
<b>17AD(d)</b>	<b>Management and accountability</b>		
	<i>Corporate governance</i>		
17AG(2)(a)	Information on compliance with s 10 (fraud systems)	Mandatory	65
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	2
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	2
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	2

PGPA Rule Reference	Description	Requirement	Page number
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	65
17AG(2)(d) – (e)	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to noncompliance with Finance law and action taken to remedy noncompliance.	If applicable, mandatory	Not applicable
	<i>Audit Committee</i>		
17AG(2A)(a)	A direct electronic address of the charter determining the functions of the entity's audit committee.	Mandatory	66
17AG(2A)(b)	The name of each member of the entity's audit committee.	Mandatory	66
17AG(2A)(c)	The qualifications, knowledge, skills or experience of each member of the entity's audit committee.	Mandatory	66
17AG(2A)(d)	Information about the attendance of each member of the entity's audit committee at committee meetings.	Mandatory	66
17AG(2A)(e)	The remuneration of each member of the entity's audit committee.	Mandatory	66
	<i>External scrutiny</i>		
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	67
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	67
17AG(3)(b)	Information on any reports on operations of the entity by the Auditor-General (other than report under s 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, mandatory	Not applicable
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, mandatory	Not applicable
	<i>Management of human resources</i>		
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	68
17AG(4)(aa)	Statistics on the entity's employees on an ongoing and non-ongoing basis, including the following: a. statistics on full-time employees b. statistics on part-time employees c. statistics on gender d. statistics on staff location.	Mandatory	120

PGPA Rule Reference	Description	Requirement	Page number
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"> <li>statistics on staffing classification level</li> <li>statistics on full-time employees</li> <li>statistics on part-time employees</li> <li>statistics on gender</li> <li>statistics on staff location</li> <li>statistics on employees who identify as Indigenous.</li> </ul>	Mandatory	120
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under ss 24(1) of the <i>Public Service Act 1999</i> .	Mandatory	70, 131
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	131
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	131
17AG(4)(c)(iii)	A description of non-salary benefits provided to employees.	Mandatory	70
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	If applicable, mandatory	Not applicable
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, mandatory	Not applicable
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, mandatory	Not applicable
17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, mandatory	Not applicable
	<i>Assets management</i>		
17AG(5)	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities	If applicable, mandatory	Not applicable
	<i>Purchasing</i>		
17AG(6)	An assessment of entity performance against the <i>Commonwealth Procurement Rules</i>	Mandatory	72
	<i>Reportable consultancy contracts</i>		
17AG(7)(a)	A summary statement detailing the number of new reportable consultancy contracts entered into during the period; the total actual expenditure on all such contracts (inclusive of GST); the number of ongoing reportable consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting period on those ongoing contracts (inclusive of GST).	Mandatory	72

PGPA Rule Reference	Description	Requirement	Page number
17AG(7)(b)	A statement that ‘During [reporting period], [specified number] new reportable consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing reportable consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]’.	Mandatory	72
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	72
17AG(7)(d)	A statement that “Annual reports contain information about actual expenditure on reportable consultancy contracts. Information on the value of reportable consultancy contracts is available on the AusTender website.”	Mandatory	72
	<i>Reportable non-consultancy contracts</i>		
17AG(7A)(a)	A summary statement detailing the number of new reportable non-consultancy contracts entered into during the period; the total actual expenditure on such contracts (inclusive of GST); the number of ongoing reportable non-consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting period on those ongoing contracts (inclusive of GST).	Mandatory	72
17AG(7A)(b)	A statement that ‘Annual reports contain information about actual expenditure on reportable non-consultancy contracts. Information on the value of reportable non-consultancy contracts is available on the AusTender website.’	Mandatory	72
17AD(daa)	<i>Additional information about organisations receiving amounts under reportable consultancy contracts or reportable non-consultancy contracts</i>		
17AGA	Additional information, in accordance with s 17AGA, about organisations receiving amounts under reportable consultancy contracts or reportable non-consultancy contracts.	Mandatory	72
	<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	Not applicable
	<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	Not applicable

PGPA Rule Reference	Description	Requirement	Page number
	<i>Small business</i>		
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	73
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	73
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	Not applicable
17AD(e)	Inclusion of the annual financial statements in accordance with ss 43(4) of the Act.	Mandatory	76
	<i>Executive remuneration</i>		
17AD(da)	Information about executive remuneration in accordance with Subdivision C of Division 3A of Part 23 of the Rule.	Mandatory	117
17AD(f)	<i>Other mandatory information</i>		
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	Not applicable
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, mandatory	74
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	Not applicable
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	74
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	74
17AH(1)(e)	Correction of material errors in previous annual report	If applicable, mandatory	166
17AH(2)	Information required by other legislation	Mandatory	74

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**Australian Government**

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**Office of the Australian  
Information Commissioner**

Annual report 2021–22

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OAIC