



**Australian Government**

**Office of the Australian Information Commissioner**

# Freedom of Information Amendment Bill 2025 Inquiry by the Senate Legal and Constitutional Affairs Legislation Committee

Submission from the Office of the Australian Information Commissioner



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# Introduction

1. The Office of the Australian Information Commissioner (OAIC) provides this submission to assist the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) in its inquiry into the *Freedom of Information Amendment Bill 2025*. The OAIC welcomes the Parliament's consideration of the proposed amendments as it provides the opportunity for a public debate on ways to improve and modernise the operation of the FOI scheme.
2. As an independent statutory agency, the OAIC regulates privacy and freedom of information (FOI) under the Commonwealth *Privacy Act 1988* (Privacy Act) and the *Freedom of Information Act 1982* (FOI Act) and has specific functions under the *Australian Information Commissioner Act 2010* (AIC Act) relating to the access to government information.<sup>1</sup> In addition to these three principal Acts, a further 37 pieces of primary and subordinate legislation confer regulatory and other responsibilities on the OAIC, or require other bodies to consult the OAIC on privacy matters.
3. The OAIC notes that the inquiry into this Bill is being undertaken alongside other reviews and legislative proposals which underscore the importance of integrity in information.<sup>2</sup> The OAIC's operational expertise and regulatory data has informed this submission, with the objective of contributing to the Committee's consideration of the proposed reforms and the improvement of the FOI framework. The submission provides the Committee with information:
  - a. on the right to access information in Australia together with established national and international comparative measures,
  - b. the role of FOI in securing access to information,
  - c. the performance of agencies and the OAIC under that framework in recent years, and
  - d. the potential operational impacts of the reforms on the OAIC and the Commonwealth FOI framework.

## Part 1: The right to access information

4. Article 19 of the Universal Declaration of Human Rights provides the right to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>3</sup>
5. The right to access government information is enshrined in Australia's information access framework. The enactment of a statutory right to access government information in Australia reflects the critical importance of openness, accountability and transparency in the proper functioning of representative democratic government. These features are also essential to promoting trust in government.

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<sup>1</sup> The functions of the OAIC are set out in the AIC Act, see relevantly: section 7 (Definition of information commissioner functions), section 8 (Definition of freedom of information functions) and section 9 (Definition of privacy functions).

<sup>2</sup> See for example the [Select Committee on Information Integrity on Climate Change and Energy](#) inquiry into the prevalence and impacts of misinformation and disinformation relating to climate change and energy, and the [Senate Standing Committee on Community Affairs Legislation Committee inquiry](#) into the Australian Centre for Disease Control Bill and consequential amendments.

<sup>3</sup> UN General Assembly, Resolution 217A (III), *Universal Declaration of Human Rights* (10 December 1948) art.19

6. The objects of the FOI Act state clearly that the objective of providing the Australian community with a statutory right to access to information held by the Australian Government, is to promote Australia's representative democracy including through public participation and transparency in the processes and decisions of government.
7. The objects of the FOI Act also recognise that government-held information is a national resource and must be managed for public purposes. The FOI Act requires agencies to publish information and provide for a right of access to documents. The exercise of functions and powers under the FOI Act is intended, as far as possible, to facilitate and promote timely public access to information and at the lowest reasonable cost.
8. FOI is intended to enhance public participation in government processes, with a view to promoting better-informed decision-making, and support scrutiny, discussion, comment and review of government decisions and activities. FOI enables individuals to access documents to help them understand why and how decisions affecting them are made. Part II of the FOI Act establishes the Information Publication Scheme (IPS) which encourages agencies to release information to the public proactively. As a pillar of the information access framework, proactive release of information is intended to encourage ease of access together with greater openness and transparency in government and reflects the pro-disclosure goals of the FOI Act. A community that is better informed can participate more effectively in democratic processes. An effective and efficient FOI system that facilitates both proactive and reactive release of information is therefore fundamentally in the public interest.
9. Australia's FOI laws and framework, underpinned by the objects of the FOI Act, focus on proactive disclosure, and emphasise the public interest and independent regulation. These concepts have been considered in the development and enhancement of domestic, regional and international information access, transparency and accountability frameworks.
10. The effectiveness of the current state of Australia's FOI framework has been quantified by the [Centre for Law and Democracy's Right to Information \(RTI\) rating](#) which assesses the strength of national legal frameworks for accessing information held by public authorities; the Australian FOI Act has a ranking of 87 from a maximum of 150 points.
11. It is important to note that we are currently experiencing an unprecedented and ever-increasing growth in information and data generation, which also involves an increase in the dissemination of misinformation and disinformation. We are at a critical juncture where access to authoritative and accurate information is paramount to a democratic system of government and democratic values. Accurate data and information are essential not only to support the accelerated implementation of digital initiatives across government and build trust in the uptake of digital tools, but it is vital to combat misinformation and division.

12. The importance of access to information in journalism has been shown to support government accountability, civic engagement, promote productivity and assist in fighting against corruption.<sup>4</sup> Timely access to information also supports inclusion and a participative democracy. This highlights the role of access to information in protecting and promoting human rights and sustainable development goals.<sup>5</sup>
13. The balancing of the public interest in access to information and other interests including the interests of government and commercial entities is accommodated under the provisions of the FOI Act referable to decision-making. The proposed amendments to the objects of the FOI Act introduce further considerations to be applied by decision makers in interpreting the FOI Act. The impact of these amendments may have the effect of tempering the interpretation of the right to access information as a precursor to any decision-making required under the FOI Act. This proposed amendment may also introduce an unintended limitation on the realisation of the right to access information as a single source of truth in a contemporary context of declining trust.<sup>6</sup>
14. To support trust in government, leaders must actively champion behaviours that demonstrate their commitment to openness and accountability. Since 2017, Australian Information Access Commissioners and Ombudsmen have published annual metrics on the community's exercise of FOI access rights. This reporting provides insights into the performance of the Commonwealth FOI system, as well as FOI laws at the state and territory level. It also promotes community awareness of the FOI framework, including how FOI laws work and how the community accesses their legislated rights.
15. From 2021-22 to 2023-24, the Commonwealth received the second highest count of FOI applications among Australian jurisdictions. The Commonwealth also had the highest percentage of applications for Information Commissioner review of agency decisions. During this period, the Commonwealth had the highest percentage of requests where access was refused in full, and underperformed on timeliness when compared to other Australian jurisdictions. In relation to decisions made within the statutory timeframe, the Commonwealth had an average percentage of 72.7% compared to 86.5% for all other jurisdictions over the same period.
16. The increase in FOI applications made to Commonwealth agencies is elevated compared to other jurisdictions, for example NSW saw an increase of 11% in applications and Victoria saw a 9.5% increase in 2023-24. This is also reflected in the volume of applications for reviews increasing at a higher rate for the OAIC, compared to states and territories.<sup>7</sup>

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<sup>4</sup> UNESCO (2024), Journalism for development: the role of journalism promoting democracy and political accountability and sustainable development, (page 2).

<sup>5</sup> UNESCO (2024), Journalism for development: the role of journalism promoting democracy and political accountability and sustainable development, (page 2).

<sup>6</sup> UNESCO (2024), Journalism for development: the role of journalism promoting democracy and political accountability and sustainable development, (page 2).

<sup>7</sup> National Dashboard – Utilisation of Information Access Rights ([OGP metrics all jurisdictions all years](#))

17. Australians have told us that access to government information improves transparency and accountability, and is important.<sup>8</sup> Generally, Australians hold positive views about government openness, with 70% believing they can easily access public information and 46% feeling as though they are able to participate in the Australian political landscape, noting that engagement is generally limited to voting.<sup>9</sup>
18. The functional operation of the FOI framework is a measure of the health of our democracy, which should be responsive to the digital environment and secure community expectations. On 2 October 2025 the OAI released an Information Access – Community Study Report, measuring Australians’ attitudes towards information access and the FOI system.
19. Key findings include that:
  - 96% of Australians, regardless of age, gender or location, feel their right to access government information is important (58% very important; 38% quite important). This is an increase of 5% from 2023 and an increase of 12% from 2019.
  - Nearly 1 in 4 Australians were unaware of their right to access information from specific government organisations. Awareness of the right to access personal information from the Federal Government has increased, but recognition for other organisations remains unchanged since 2019.
  - 40% of Australians tried to access information from Federal Government organisations in the past 3 years, with the biggest increase in requesting personal information from the Federal Government.
  - Most Australians (86%) agree the Government must publicly report on any technology used to inform decision-making (including AI and automated decision making), with 56% strongly agreeing.
  - Only 44% of Australians are confident the FOI Act will allow them access to information about how decisions are made by the Federal Government and agencies.
20. The UNESCO Report on Public Access to Information regarding Sustainable Development Goals (16.10), found 88% of respondents specified the need for a dedicated information access oversight institution,<sup>10</sup> demonstrating the importance of independent oversight and ensuring resources are in place to safeguard access to information rights.
21. In the Australian context, our Community Study Report 2025 found that 97% of national respondents view having an independent regulator report on an agency’s performance in meeting the community’s right to access information as important. This report emphasises the value placed by Australians in the FOI system, and underscores the important role held by the OAI in upholding information access rights. The community attitudes and expectations reflected in these results are an important consideration in the context of broader reforms to the FOI system.

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<sup>8</sup> Information Access – Community Study Report 2025.

<sup>9</sup> OECD (2025), Drivers of Trust in Public Institutions in Australia, Building Trust in Public Institutions, OECD Publishing, Paris, (page 9).

<sup>10</sup> UNESCO’s Report on Public Access to Information, p 11  
[unesdoc.unesco.org/ark:/48223/pf0000393238/PDF/393238eng.pdf.multi](https://unesdoc.unesco.org/ark:/48223/pf0000393238/PDF/393238eng.pdf.multi)

## Part 2: The operation of the FOI Act in securing access to information

### Summary of key statistics

22. In 2024–25, Australian Government agencies and ministers received 43,456 FOI requests, which is the highest number on record. The majority of these requests involved an individual seeking access to their own personal records. The 2019–20 reporting year is the only other year in the past 7 years where the number of FOI requests exceeded 40,000 (**Appendix A**).
23. It is clear that there is pressure on the FOI system, as evidenced through the increased FOI requests received, including the 46% increase in FOI requests received by the Department of Home Affairs. There does not appear to be a single cause for this increase, with agencies describing different reasons. Some agencies attribute the increase to interest in their expanded regulatory scope and functions, interest from media and increased requests received from Australian Senators and Federal Members of Parliament relating to procurement.<sup>11</sup>
24. The Department of Home Affairs FOI workload, and the impact its FOI performance is having on the whole FOI system results in 2024–25, is significant. FOI requests made to the Department of Home Affairs comprised 40% of all FOI requests made in 2024–25 (**Appendix B**). The statistical results in our Annual Report for 2024–25 will provide two sets of figures – the first reflecting all agencies including the Department of Home Affairs; and the second excluding the Department of Home Affairs. This approach to reporting on the 2024–25 results intends to support improved understanding of trends and pressure points across the system, and overall FOI performance.<sup>12</sup>
25. In 2024–25, 74% of all FOI requests were requests seeking access to personal information; 26% of requests were for other government-held information. This result is consistent with data from the previous 2 years. When the Department of Home Affairs figures are excluded, the proportion of requests to all agencies seeking access to personal information decreases to 59%, and requests for other information increases to 41%. This demonstrates that the community is active in seeking information besides their personal information.
26. There have been increases across the whole FOI framework:
  - The total number of new entries added to agency disclosure logs in 2024–25 was 3,363, an increase from 2023–24 (2,481) and 2022–23 (2,493).
  - There was a 13% increase in internal review applications (915) in 2024–25. The number of internal review decisions (812) was 9% more than in 2023–24 (when 748 decisions were made).
  - There was a 26% increase in FOI complaints, a 41% increase in IC reviews.
  - There was a 46% increase in extension of time (EOT) notifications (with consent between the parties) in 2024–25 compared with 2023–24.

<sup>11</sup> Office of the Australian Information Commissioner Annual Report 2024–25.

<sup>12</sup> Office of the Australian Information Commissioner Annual Report 2024–25.

- The total reported costs attributable to FOI in 2024–25 were \$97.99 million, a 14% increase on 2023–24 (\$86.24 million). When Department of Home Affairs figures are excluded, the total reported costs attributable to FOI in 2024–25 were \$76.74 million, a 9% increase on 2023–24 (\$70.37 million).
27. The OAIC continues to receive a large volume of FOI complaints about agencies' compliance with timeliness. The OAIC received 339 complaints in 2024-25, a 26% increase compared to 2023-24, with the issue most commonly raised being timeliness, with agencies reporting that there has been an increase in the volume and complexity of FOI requests.
28. The Information Commissioner has completed investigations into 3 agencies in relation to timeliness issues to understand the underlying factors contributing to agencies' non-compliance with making decisions within the specified timeframes. Importantly the Information Commissioner has made recommendations to facilitate improved compliance.

## The OAIC's FOI regulatory activities

29. The OAIC's FOI regulatory activities are predominantly focused on casework functions to address the aged cases, specifically IC reviews, which have increased substantially by 21% in 2024-25. Against this increase the OAIC finalised 41% more applications in 2024-25 compared to 2023-24 (which was also a period of notable increase in OAIC finalisation rates at 15%).
30. Notably, there has been a 19% increase in deemed access refusal applications since 2023-24. These increases have required consideration of processes and use of specific regulatory powers to facilitate timely resolution. In comparison, there was a slight decline of 0.4% in reviews received by NSW from 2022-23 to 2023-24 and figures remained stable in Victoria. In relation to FOI enquiries received by the OAIC, there was an 11% increase from 2023-24 to 2024-25.
31. In 2024–25, 248 IC review decisions were made under section 55K of the FOI Act, with 62% of decisions setting aside the decisions under review.
32. Other FOI functions of the OAIC include:
- promoting awareness and understanding of the FOI Act and the objects of the Act
  - providing information, advice, assistance and training to any person or agency on matters relevant to the operation of the FOI Act
  - monitoring, investigating and reporting on compliance by agencies with the FOI Act
  - assessing and investigating complaints of agency actions relating to the handling of FOI matters under Part VIIB of the FOI Act
  - assessing and determining extension of time applications from agencies and Ministers in relation to decisions on FOI requests
  - overseeing the Information Publication Scheme (IPS)
  - compiling FOI data and assess trends,
  - reporting and recommending to the Minister proposals for legislative change to the FOI Act or administrative action necessary or desirable in relation to the FOI Act; and
  - any other function conferred on the Information Commissioner by the FOI Act or by another Act which is expressed to be an FOI function.

33. Against the backdrop of the FOI results summarised above, the OAIC has undertaken a range of activities to uplift agencies' FOI capabilities, including developing tools, updating guidance and providing education for FOI practitioners.
34. It is a current priority to uplift agency capability in the exercise of FOI functions and to make FOI compliance easier. The OAIC's efforts to do so are demonstrated, for example, by an FOI Practitioner Survey conducted in 2024–25 to better understand the needs of the people at the heart of the system.
35. An initiative the OAIC undertook in 2024–25 to make FOI compliance easier was the launch of an FOI self-assessment tool for agencies. This interactive Excel document, published on 27 February 2025, assists agencies to understand the effectiveness of their information access systems and the extent to which these comply with the FOI Act. Agencies can use the self-assessment tool to identify gaps or areas where attention is needed, as well as areas where they are doing well. The OAIC guidance supports the amelioration of weaknesses identified by agencies.
36. The OAIC's FOI processing period calculator is another tool for agencies, which assists FOI practitioners to calculate the period during which they are required to process access requests made under the FOI Act. The calculator takes into account the full variety of factors that may affect the default processing period set out in subsection 15(5)(b) of the FOI Act.
37. In 2024-25, the OAIC conducted a series of webinars for FOI practitioners that covered areas such complaints, extensions of time, vexatious applicants, FOI statistics, and IC review practice updates that provided detailed information on each topic and made clear what our focus areas are.
38. In 2025 the OAIC reviewed Part 3 of the FOI Guidelines relating to processing and decision-making under the FOI Act. The 2024 OAIC FOI practitioners' survey found that 82% of agencies reported the FOI Guidelines were the most used resource to assist them in performing their FOI functions.
39. To improve public access to data the OAIC launched a new statistics dashboard, publishing information about the operation of Australia's FOI system. The dashboard presents key FOI data reported to the OAIC by Australian Government agencies and Ministers, updated on a quarterly basis. It was created to help government, agencies, media and the public better understand the volume and type of FOI requests received and how well agencies are meeting their obligations under the FOI Act.

## Part 3: Operational implications for the OAIC

40. The proposed package of FOI reforms involves at least 31 different sets of amendments. Should the reforms be enacted, there will be two systems of FOI law operating at the federal level until such time as all legacy cases are finalised.
41. A dual system will required government agencies, applicants, the OAIC and the Administrative Review Tribunal (ART) to simultaneously work under two different legal frameworks (and two

sets of guidelines issued under section 93A of the FOI Act) with different requirements relating to access, grounds for refusal and review and regulatory powers, depending on when a request or review application was made. This will have an operational burden and increases the cost of compliance and access for participants in the FOI Framework. That increased level of complexity may require consideration of mitigation strategies to facilitate the community's right to access information.

42. The information below sets out issues relating to the operation of the reforms for the Committee's consideration, in the context of year-on year increases in IC review applications, FOI complaints and extension of time applications.

## **Changes to the objects of the FOI Act**

43. The objects of the FOI Act will be amended to expressly provide that the right to access to information is to be balanced against the protection of essential private interests and the proper and effective operation of government. The amendment seeks to limit the objects of the FOI Act by importing a test of "as far as possible". It is likely this amendment could lead to more refusal decisions, giving rise to an increase in IC reviews, particularly when read together with the proposed amendments to the public interest factors for conditional exemptions. This will, for the first time, insert statutory considerations weighing against disclosure into the objects of the FOI Act, which decision makers will need to consider when arriving at a decision on an access request, internal review and IC review.
44. The OAIC notes that the new proposed factors to consider are already embedded in the decision-making process, anticipated in considering disclosure under the FOI Act, as noted in the conditional exemptions under Part IV Division III, notably sections 47F (personal privacy exemption) and 47E (certain operations of agencies) and the public interest test factor under section 11B. The Guidelines issued under section 93A of the FOI Act also list factors against disclosure (see paragraph 6.233 of the FOI Guidelines).

## **Key concepts and definitions**

45. The reforms introduce substantial changes to key concepts and definitions such as a document of an agency and an official document of a Minister. The proposed reforms seek to clarify the definition of a document of an agency by amending the definition to include 'and the document forms part of, or relates to, the operations of the agency'. This is a substantial change to the definition and will require significant amendment to the FOI Guidelines.
46. In relation to an official document of a Minister, the reforms introduce a new concept of "forwarding requests". Currently subsection 16(4) of the FOI Act reflects on forwarding documents with requests and a similar approach might be needed for the "forwarding" provisions if it is intended for agencies to process the request on behalf of the Minister rather than by reference to their own holdings.
47. The automatic forwarding provisions also remove the ability of an incoming Minister to consider the request on behalf of an outgoing Minister unless the outgoing Minister specifically facilitates this before leaving office. This approach appears to remove some of the flexibility that currently exists and there may be practical implications, for example if a request has been overlooked or is made close to the cessation of the outgoing Minister.

48. The proposed amendments also change references to ‘calendar days’ to ‘working days’. This proposal will extend the timeframe for responding to a request from approximately 4 weeks to 6 weeks. The new timeframe may also inform the consideration of EOT applications to further extend the processing timeframes as set out in sections 15AB, 15AC, 65D and 51DA.
49. The reforms remove name disclosures of non-SES staff in the provision of access to documents, noting there are proposed circumstances where the employee identifying information can be disclosed such as where the employee is publicly known to be associated with the subject matter of the requested document(s). This proposal will require careful decision-making and will likely lead to IC review applications which will require consideration of section 22 and exemptions that may be relevant in considering the disclosure of such information. These changes will require agencies to have regard to changed guidelines, reporting requirements and internal processes.

### Vexatious requests

50. Currently, the Information Commissioner has the power to declare a person a vexatious applicant if satisfied the grounds in section 89L of the FOI Act are met. Vexatious applicant declarations that have been issued (whether active or expired) are generally publicly available. To date, the OAIC has made 19 declarations out of 59 applications under section 89K based on factors such as abuse of process or manifestly unreasonable access actions. Further factors are outlined in Part 12 of the FOI Guidelines. As at 2 October 2025, the OAIC has 6 applications on hand from agencies under section 89K of the FOI Act seeking to have a person declared a vexatious applicant.
51. The reforms permit individual requests to be declared vexatious rather than a person being declared a vexatious applicant with abbreviated notice requirements and no internal review. The use of this power by agencies and Ministers may give rise to an increase in the number of IC review applications and legal challenges relating to this new ground of refusal as well as FOI complaints where applicants form the view that their requests are repeatedly refused under this power. Consistent with the above, there will be a need for agencies to have regard to the new guidelines and amend their internal processes to adjust to the new system of law.

### Fees

52. Section 29 of the FOI Act provides that an agency or Minister may impose charges in respect of FOI requests, and sets out the process by which charges are assessed, notified and adjusted. Charges may only be imposed for requests relating to other (non-personal) information **(Appendix E)**.
53. The proposed reforms amend subsection 15(2) to provide that the request must be accompanied by the fee (if any) prescribed by the regulations, unless otherwise waived. If the fee is not paid, the request is invalid and does not have to be processed. These amendments will also apply to internal and IC reviews.
54. Although the Bill does create a regulation making power to set fees, there is no draft regulation currently proposed to impose specific fees. However the proposed reforms indicate that fees cannot be required where the request is for personal information of the individual or of another person on whose behalf the applicant is seeking access. These reforms may reduce the number of non-personal FOI requests made to agencies and Ministers, with a corresponding decline in IC review applications, although the OAIC notes there may be a significant increase in applications ahead of fees being introduced. The OAIC understands that

the decision to impose or waive a fee would not be subject to review, in contrast to the decisions made under section 29. Consideration may need to be given to the interaction between regulations relating to fees as well as existing charges regulations.

## Anonymous requests

55. Under subsection 15(1) of the FOI Act, the current requirements for requesting access to a document of an agency or Minister are confined to: the request being in writing, stating it is an application for the purposes of the FOI Act, providing enough information for the document to be identified, and including appropriate details as to how notices under the FOI Act can be provided to the applicant.
56. Prohibiting anonymous requests imposes a new requirement on agencies to assure themselves of the identity of a person seeking access to personal information, or information concerning the business, commercial or financial affairs of the applicant. It also introduces a new requirement for agencies to assure that authorisation is in place for a third party acting on behalf of a person in relation to an access request for personal information.
57. The Explanatory Memorandum notes that limitations on privacy are balanced by existing information protection, identity proofing and broader privacy frameworks. An APP entity must only collect personal information which is reasonably necessary for one or more of the entity's functions or activities (APP 3). The OAIC understands the drafting to be sufficiently broad to allow agencies to use a variety of ID verification checking methods such as potential use of Digital ID in the future and note there may be potential complaints made under both the FOI and Privacy Acts where applicants form the view that the personal information requested by an agency or APP entity is not reasonably necessary.
58. However, the OAIC recognises that the identity of the individual is important in determining requests for personal information. Similarly, the systems to validate the authority of a representative are also important to the credibility of the FOI system and decision-making.

## Non-disclosure of certain identifying information

59. It is currently required that the name and designation of the person giving the decision is included in a statement of reasons, during a consultation process, and in relation to charges notices.
60. The reforms remove names and certain identifying information of all staff in the statement of reasons under section 26, in the consultation process in relation to section 24AB and in the decision notice in relation to a charge under section 29. This may require consideration in identifying the relevant decision maker and any processes for managing conflicts of interest when seeking review of a decision through the decision maker, merits review through the Information Commissioner and/or ART and judicial review via the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

## Transfer of requests

61. Although the transfer of requests is an established process, the proposed reforms include a new element in that for the purpose of transferring a request under subsection 16(1), agencies and Ministers will not be required to search for a document if it is apparent that the document would not be in possession of the agency. As an access refusal decision reviewable by the Information Commissioner, it will likely result in an increased number of IC review

applications and complaints about agency conduct, noting that Ministers are not subject to the complaints process.

### Deemed refusal process

62. Currently, a 'deemed refusal' occurs if the time for making a decision on a request for access to a document has expired and an applicant has not been given a notice of decision. If this occurs, the principal officer of the agency or the minister is taken to have personally made a decision refusing to give access to the document on the last day of the 'initial decision' period.
63. The reforms require agencies and Ministers to continue to deal with requests in the same way as if the deemed refusal had not occurred.
64. The proposed approach may provide greater clarity for the OAIC and parties as to the decision under review because it specifies that an actual decision made outside the statutory timeframe is an IC reviewable decision.
65. The changes also deal with relevant flow-on effects for internal and IC review processes and this will require amendments to how decisions and timeliness obligations are reported.
66. In 2024-25, 79% of all IC review applications involved deemed access refusal decisions (1,691 IC review applications for review of deemed decisions out of a total of 2,136 IC review applications), an increase of 19% from 2023-24 (when 60% of all IC review applications involved deemed access refusal decisions). For IC review applications that named the Department of Home Affairs as the respondent, 97% were reviews of deemed access refusal decisions in 2024-25.

### Extension of time

67. The current drafting of section 15AA requires agencies or Ministers to provide written notice of the extension of time agreed with the applicant to the Information Commissioner.
68. The reforms also allow agencies and Ministers to agree between themselves and the applicant to extend timeframes (beyond 30 days) or conclude an IC review, removing the need for OAIC engagement in the process. Although the OAIC will no longer be notified, the OAIC will need to seek proof of the agreement during the EOT process to ensure applications are correctly made.
69. We received 36% more notifications advising of an EOT (by consent) in 2024-25 compared to 2023-24, with 6,045 FOI requests being extended beyond the initial day processing timeframe, which are also subject to additional time based on consultations and other procedural steps.<sup>13</sup>
70. The OAIC also received 816 applications for a decision by the IC for extension of time during this financial year, compared to 986 in 2023-24.

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<sup>13</sup> An agency or minister may extend the 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 or minister 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 or minister to take more than 30 days to process a request. When an agency or minister 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 made within the statutory time period.

## Cabinet and deliberative processes exemptions

71. One of the tests to determine whether documents meet the Cabinet exemption under section 34 of the FOI Act is whether they were brought into existence for the dominant purposes of submission for consideration by Cabinet or briefing a Minister on such documents.
72. The reforms remove the ‘dominant purpose’ test in relation to Cabinet exemption requirements for documents and briefings and replace it with the ‘substantial purpose’ test. The expanded threshold may lead to legal challenges to clarify interpretation and application given it will enable decision-makers to refuse access to documents that are of significant interest to the public. The potential increased coverage of documents to which section 34 may apply may also result in more access refusals and lead to an increase number of IC review applications. The cabinet exemption was claimed by agencies and Ministers 245 times in 2024-25, 179 times in 2023-24 and 128 times in 2022-23 making up 1% of all exemptions applied for each year (**Appendix C**).
73. In promoting access to information, section 11B of the FOI Act does not currently list any factors against access and the proposed reforms look to insert a number of public interest factors against access that apply to section 47C. Section 47C is a conditional exemption for documents if their disclosure would disclose deliberative matter prepared or recorded, or consultation or deliberation that has occurred in the course of or for the purposes of deliberative processes involved in the functions of agencies, Ministers, Government or the Commonwealth. The use of the deliberative processes exemption under section 47C of the FOI Act was used 1,140 times in the same period, making up 5% of the total exemptions applied (**Appendix D**).
74. There were 2,134 applications for IC review in 2024-25 (a 21% increase from 1,766 in 2023-24). This is the highest number of IC review applications received by the OAIC in a year (the second-highest number was 1,954 in 2021-22). There was also a 41% increase in the number of IC reviews finalised by the OAIC in 2024-25 (2,470), compared with 2023-24 (when 1,748 were finalised). Since 2016-17, there have been year-on-year increases in the number of IC reviews finalised, and the number finalised by the OAIC in 2024-25 is the highest number on record (**Appendix F**).

## Processing cap

75. Currently, a practical refusal reason exists under subsection 24AA(1) when the work involved in processing the request substantially and unreasonably diverts an agency’s resources from its other operations or interferes with the performance of the Minister’s functions, or the request doesn’t satisfy the identification of documents requirement.
76. A 40-hour processing cap will be prescribed for the purposes of refusing a request on the basis that a practical refusal reason requests.
77. Agencies will need to have regard to new guidelines for assessment of hours with an ongoing role for IC reviews in relation to these matters.

## New grounds for refusing access

78. As a new element in the decision-making process, these reforms allow an agency or Minister to refuse to give access to a document, without identifying the document, if it is apparent that

it would be exempt. Agencies will need to have regard to clear guidelines when exercising this power, particularly in relation to conditional exemptions and material that is partially publicly available. It will be important to clearly outline how agencies will be able to make a decision without seeing all of the documents and weighing up the public interest test. As this will be an access refusal decision reviewable by the IC, it will likely result in an increased number of IC review applications and complaints.

79. This new ground may also be subject to legal challenges given the impact on administrative decision-making processes would usually require a review of the relevant documents to ground a decision to refuse access.<sup>14</sup>

## **Regulatory and procedural impacts of reforms on the OAIC**

80. The proposed amendments will have significant resourcing and regulatory impacts for the OAIC as the regulator of the FOI system. Some of the impacts are explained below, noting this is not an exhaustive list:

- Implementation of the reforms will require significant changes to FOI case management operational procedures, guidance and templates, new FOI Guidelines and Practice Directions, ICT systems changes in the OAIC, and changes to smartforms and public facing information.
- During the transitional period, the OAIC will need to establish new case management processes and systems to implement the new jurisdiction, while simultaneously maintaining the current system of review and procedures under the current FOI Act.
- The proposed establishment of a fee regime for FOI requests and subsequent reviews will be prescribed in the Regulations. Noting that requests for access to personal information are proposed to be excluded from the fee regime and the expanded dual track for access to information requests both under the FOI Act and APP 12 of the Privacy Act, this may lead to the unintended consequence that the majority of FOI requests received will continue to be related to personal information, diminishing the objects of the FOI framework to promote and allow public access to government information. Further the legislative timeframes and other decision-making requirements together with regulatory powers extant under the FOI Act are not replicated under the Privacy Act in circumstances where a decision maker refuses access to information.
- The OAIC notes that the establishment and maintenance of a fee regime will include changes to lodgement procedures, creation of a payment portal, and development of other processes and delegations to collect, waive and refund fees, and as such, is likely to far outweigh any revenue collected from fees.
- The proposed removal of the requirement to notify the OAIC of EOT agreements under section 15AA may have unintended consequences as the system is currently automated and does not significantly impact the agency's caseload. This amendment will likely increase the number of complaints received regarding disputes in relation to the extension of time process and OAIC staff will be unable to access the appropriate information in a

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<sup>14</sup> [Administrative Review Council Best Practice Guide: Statements of Reasons](#)

timely manner. As such, there will be an increased number of requests for information from the OAIC to relevant agencies to assist with the management of the complaints which leads to inefficiencies for all parties.

- The ability of agencies to declare individual requests to be vexatious is expected to have a substantial increase and impact on the OAIC's review case load. The increase will be facilitated by the abbreviated notice of decision required by subsections 15AD(2), (3) and (5) coupled with decision makers no longer being required to identify themselves. This will hamper the OAIC's ability to conduct a thorough review as there will be limited information regarding how or why the decision was made. Unintended consequences may arise from this proposal that diminish the vital and recognised role the OAIC plays in the Federal government integrity framework.

## **New remittal power**

81. The new remittal power allows the Information Commissioner to remit a matter and make orders or directions in relation to the reconsideration of the matter during the course of the review with agreement from the agency or Minister. The OAIC understands that the policy intent is to contribute to the efficient handling of matters and to provide greater legal certainty for the OAIC. However, requiring consent from agencies and Ministers will have unintended consequences, significantly impacting usage of the provision as well as the timely and effective resolution of matters. Timeliness may also be adversely impacted by agency engagement in the absence of an identified decision maker and the proposed requirements for the agency and applicant to agree to a new date as to when a revised decision will be made. The injection of additional procedural steps may introduce new friction points within the FOI system.
82. The reforms also introduce subsection 55K(1A) that gives the IC power to remit a practical refusal decision back to the agency for reconsideration, which will provide certainty to the status of a decision. The OAIC notes that there may be the potential for confusion with the new remittal power in subsection 55G(A)(1), however the positioning of this new provision in section 55K confirms this is a 'decision' of the IC, compared with the remittal power applicable to all other reviews – which are not decisions under section 55K.

## **Discretion not to review or investigate**

83. The reforms to section 54W will give the IC a discretionary power to not undertake an IC review where there is an ongoing internal review application of an access refusal or access grant decision, and the agency has not yet made a decision. Further, amendments to section 73 provide additional grounds on which the IC can decide not to investigate a complaint, and the ability to delegate the power to non-SES is likely to significantly improve the timeliness of complaint handling, provide more efficient use of the OAIC's resources and brings these powers into line with similar regulatory powers under the Privacy Act.

## **Removal of delegations**

84. The reforms also amend further delegations powers available to the IC in the AIC Act, including the removal of the ability to delegate the power to issue notices under sections 55R and 79 of the FOI Act.

85. Against the starting point of extant compliance levels, the OAIC noted that by removing the delegations, the unintended consequences of this proposed amendment is that it will cause a delay in the processing of matters and may increase timeframes for completing IC reviews and complaints as it prevents SES and officer-level staff from performing these functions. The proposal also introduces inconsistencies with the current exercising of similar powers under the Privacy Act. A section 55R notice is issued to agencies to compulsorily obtain documents, and any non-compliance may attract a penalty if enforced. Compulsory notices, as issued by delegates, are routinely used across information access legislative frameworks in Australia, to obtain access to documents relevant to investigations.<sup>15</sup> The OAIC also notes that current delegations are exercised infrequently and judiciously – for example:

- From 1 July 2025 to 23 September 2025 only 5 notices were issued under section 55R notices by a delegate. In 2024-25, 7 notices were issued under section 55R.
- For the same period, the OAIC sent 29 forward notices, which included one notice relating to 16 matters awaiting overdue responses.
- We received 100% compliance with each of these notices.

### **OAIC current structure and funding**

86. Since February 2024, the Office of the Australian Commissioner (OAIC) has operated with a three-commissioner model. Current Commissioners are:

- Elizabeth Tydd, the Australian Information Commissioner,
- Alice Linacre PSM, the Freedom of Information Commissioner (commenced 29 September 2025) and
- Carly Kind, the Privacy Commissioner.

87. On 2 December 2024, the new OAIC organisational structure formally commenced to support its regulatory objectives and ensure the OAIC is a harm-focused, proactive regulator. The new structure seeks to combine elements of privacy and FOI where practicable whilst retaining and highlighting regulated area expertise.

88. The OAIC is a small agency of approximately 170 FTE. It has improved case management efficiency in FOI IC reviews in recent years through a focus on ongoing process reforms, workforce restructuring and surge efforts. As a result, the agency is processing and finalising more cases in all jurisdictions. The agency finalised 41% more IC reviews in 2024-25 than the prior year, specifically, 722 more FOI IC reviews were finalised in 2024-25 compared with 2023-24, and 952 more than 2022-23. Positive performance results have also been realised in reducing the number of aged matters on hand. For example, in 2024-25, the OAIC finalised 805 IC reviews pertaining to matters more than 12 months old, including closing all matters

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<sup>15</sup> See subsections 13 and 25 of the *Government Information (Information Commissioner) Act 2009 (NSW)* and subsections 103 and 145 a of the *Right to Information Act 2009 (QLD)*

lodged in 2020. The agency continues to look for further opportunities to improve case management efficiency across all workstreams.

89. In the 2025-26 Portfolio Budget Statement for the OAIC, one of the major areas of focus is leading the promotion of open government and cultivating the FOI capabilities of Australian government agencies and Ministers to secure timely access to and proactive release of government-held information.
90. Department FOI funding for 2024-25 is approximately \$4.2M and is ongoing. Requests for additional funding for FOI since 2018 have been unsuccessful other than in the 2021-22 Budget which provided for \$4.0M over the forward estimates for the appointment of an FOI Commissioner, Senior Executive Service Band 1 and 2 support staff, \$1.0M p.a. ongoing. Despite experiencing a growth in aged matters and a significant increase in applications, no further funding has been received or allocated. In the absence of further funding, the OAIC applied \$1.2M from reserves to reduce the aged FOI matters in 2022-23 and 2023-24 and has introduced a structure and improved process designed to better support case management.

## Part 4: Contemporary developments in information access frameworks

91. The OAIC also briefly notes contemporary developments in domestic and international frameworks for the Committee's consideration, with key themes relating to:
  - a. proactive publication of cabinet papers
  - b. the application of professional standards to practitioners
  - c. regulatory reporting, and
  - d. the adoption of technology to assist in streamlining the request process.

### New Zealand: Proactive disclosure of cabinet documents

92. In New Zealand, Cabinet papers and minutes must be proactively released within 30 business days of final decisions being taken by Cabinet, unless there is good reason not to publish all or part of the material, or to delay the release. This policy applies to all papers lodged from 1 January 2019, subject to certain exclusions.

### Queensland: Proactive disclosure amendments

93. In 2024, the Queensland *Right to Information Act 2009* (RTI Act) was amended to support the proactive publication of Cabinet documents through an administrative release scheme which responds to a key recommendation from the Coaldrake review of culture and accountability in the Queensland public sector.<sup>16</sup>

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<sup>16</sup> See *Review of Culture and accountability in the Queensland Public Sector*, Final report June 2022: (<https://www.coaldrakereview.qld.gov.au/reports.aspx>).

## Victoria: Review of professional standards

94. In Victoria, practitioners are subject to Professional Standards, issued in December 2019 under section 6U of the *Freedom of Information Act 1982* (Vic). The purpose of the Standards is to ensure the Act is administered by agencies consistently with:
- the Act's object – to extend as far as possible the right of the community to access information in the possession of an agency subject to the Act; and
  - Parliament's intention – that the provisions of the Act are interpreted so as to further its object and any discretions conferred by the Act are to be exercised as far as possible to facilitate and promote the prompt disclosure of information at the lowest reasonable cost.
95. The Standards are currently under review and expect to be issued in 2025-26.

## New South Wales: Report to Parliament

96. In New South Wales the Information Commissioner provides regulatory reports to Parliament (section 38 of the *Government Information (Information Commissioner) Act 2009* No 53).

## Philippines: FOI ePortal

97. Access to information in the Philippines is enabled via an Executive Order<sup>17</sup> and allows for requests to be submitted and responded to in a portal<sup>18</sup> which publishes documents released in response to a request. Users are able to search over 251,000 requests covering 725 agencies or browse information by sector.

## Conclusion

98. Improving access to government-held information in Australia is a multifaceted task with shifting needs across both the environment at large and for Australian government agencies that have a duty to manage information for public purposes. The OAIC appreciates the opportunity to contribute to consideration of FOI reform, the Committee's consideration of the proposed reforms and operation of the framework in upholding information access rights for Australians.

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<sup>17</sup> No. 2, Series of 2016.

<sup>18</sup> <https://www.foi.gov.ph/>

## Appendix A

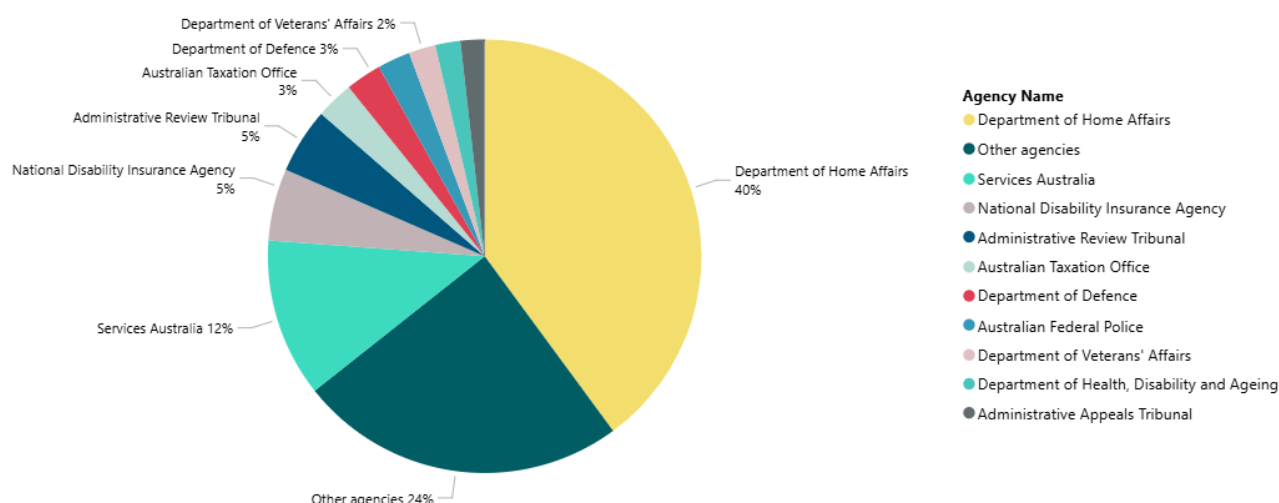
### FOI requests to Commonwealth agencies received over the past 7 years

	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24	2024–25
Number of FOI requests received	38,879	41,333	34,797	34,236	34,219	34,706	43,456
% change from previous financial year	+13	+6	–16	–2	<0.5	+1	25

## Appendix B

### Agencies by the number of FOI requests received

Requests received by agency (2024–25)



### Top 20 agencies by the number of FOI decisions made in 2024–25

Agency	Granted in full	%	Granted in part	%	Refused	%	Total	Rank
Department of Home Affairs	2076	33	3021	49	1131	18	6228	1
Services Australia	389	10	2851	76	520	14	3760	2
Administrative Review Tribunal	660	37	1044	59	80	4	1784	3
National Disability Insurance Agency	376	29	601	46	333	25	1310	4
Australian Taxation Office	199	23	480	56	180	21	859	5
Department of Defence	23	3	415	53	352	45	790	6

<b>Australian Federal Police</b>	38	5	384	54	284	40	<b>706</b>	7
<b>Australian Transaction Reports and Analysis Centre (AUSTRAC)</b>	23	3	425	63	232	34	<b>680</b>	8
<b>Administrative Appeals Tribunal</b>	375	57	254	39	25	4	<b>654</b>	9
<b>Department of Veterans' Affairs</b>	57	9	472	73	117	18	<b>646</b>	10
<b>Department of Health, Disability and Ageing</b>	85	15	246	44	224	40	<b>555</b>	11
<b>Office of the eSafety Commissioner</b>	10	2	59	13	388	85	<b>457</b>	12
<b>Department of Foreign Affairs and Trade</b>	37	9	288	67	107	25	<b>432</b>	13
<b>Department of Climate Change, Energy, the Environment and Water</b>	65	21	174	55	77	24	<b>316</b>	14
<b>Australian Securities and Investments Commission</b>	27	10	112	41	136	49	<b>275</b>	15
<b>Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts</b>	53	20	146	55	68	25	<b>267</b>	16
<b>Department of the Prime Minister and Cabinet</b>	37	14	121	47	99	39	<b>257</b>	17
<b>Attorney-General's Department</b>	8	4	109	50	101	46	<b>218</b>	18
<b>Department of the Treasury</b>	31	16	80	41	82	42	<b>193</b>	19
<b>Department of Social Services</b>	26	15	69	39	81	46	<b>176</b>	20
<b>Total top 20</b>	<b>4,595</b>	<b>22</b>	<b>11,351</b>	<b>55</b>	<b>4,617</b>	<b>22</b>	<b>20,563</b>	
<b>Others</b>	798	17	2,207	47	1,641	35	4,648	
<b>Total</b>	<b>5,393</b>	<b>21</b>	<b>13,558</b>	<b>54</b>	<b>6,258</b>	<b>25</b>	<b>25,211</b>	

## Appendix C

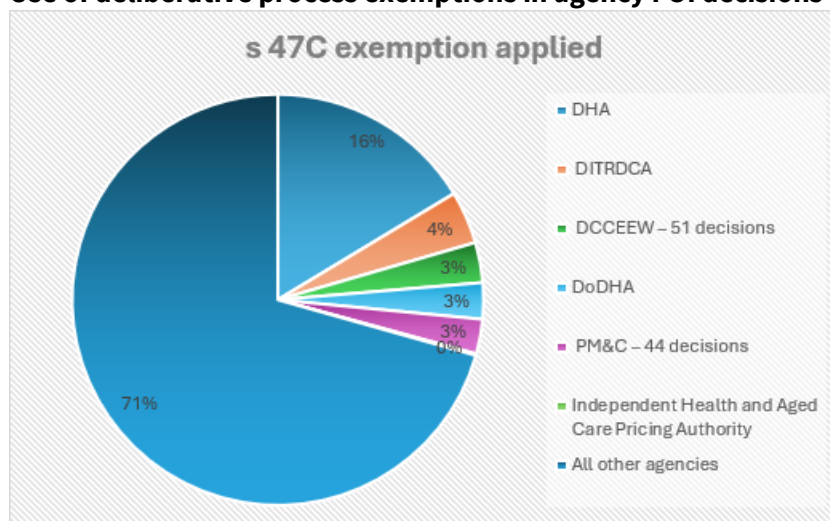
### Use of exemptions in agency FOI decisions in 2024–25

FOI Act reference	Exemption	Personal	Other	Total	% of all exemptions applied
<b>s 33</b>	Documents affecting national security, defence or international relations	195	439	634	3
<b>s 34</b>	Cabinet documents	6	239	245	1
<b>s 37</b>	Documents affecting enforcement of law and protection of public safety	473	262	735	3
<b>s 38</b>	Documents to which secrecy provisions of enactments apply	882	136	1,018	5
<b>s 42</b>	Documents subject to legal professional privilege	174	404	578	3
<b>s 45</b>	Documents containing material obtained in confidence	35	216	251	1
<b>s 46</b>	Documents disclosure of which would be contempt of Parliament or contempt of court	10	25	35	0
<b>s 47</b>	Documents disclosing trade secrets or commercially valuable information	37	428	465	2
<b>s 47A</b>	Electoral rolls and related documents	8	1	9	0
<b>s 47B</b>	Commonwealth-state relations	116	137	253	1
<b>s 47C</b>	Deliberative processes	288	852	1,140	5
<b>s 47D</b>	Financial or property interests of the Commonwealth	113	89	202	1
<b>s 47E</b>	Certain operations of agencies	3,918	1,647	5,565	26
<b>s 47F</b>	<b>Personal privacy</b>	<b>6,919</b>	<b>2,013</b>	<b>8,932</b>	<b>42</b>
<b>s 47G</b>	Business	252	846	1,098	5
<b>s 47H</b>	Research	1	2	3	0

<b>s 47J</b>	The economy	0	5	5	0
<b>Total</b>		<b>13,427</b>	<b>7,741</b>	<b>21,168</b>	<b>100</b>

## Appendix D

### Use of deliberative process exemptions in agency FOI decisions



## Appendix E

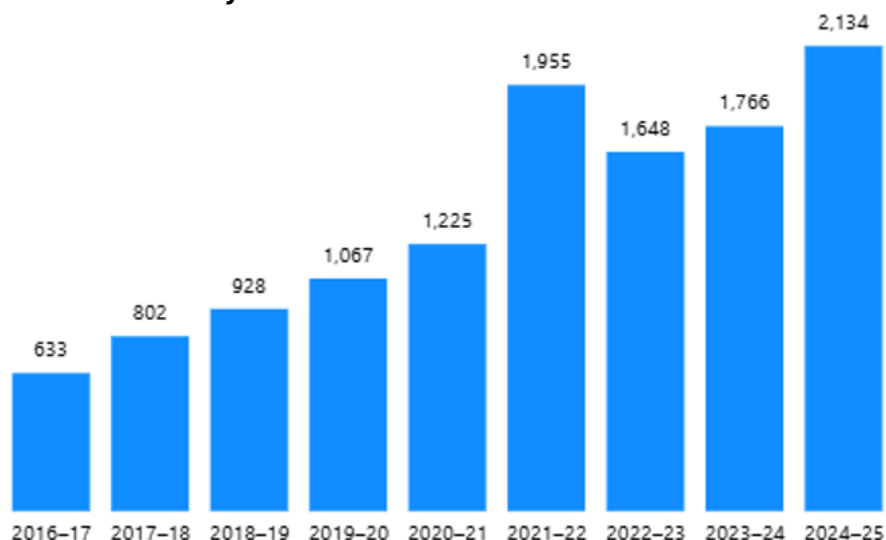
### Top 20 agencies by charges collected in 2024–25

Agency	Rank	Requests received	Requests where charges notified	Total charges notified (\$)	Total charges collected (\$)	% of charges notified that were collected
Department of Climate Change, Energy, the Environment and Water	1	403	144	40,485	19,382	48
Department of Health, Disability and Ageing	2	811	105	29,812	13,440	45
Department of Agriculture, Fisheries and Forestry	3	120	34	11,215	5,860	52
Department of Industry, Science and Resources	4	259	57	20,580	3,793	18
National Indigenous Australians Agency	5	90	22	8,608	3,653	42
Australian Research Council	6	30	7	5,589	2,736	49
Australian Competition and Consumer Commission	7	146	43	9,580	2,728	28
Department of Education	8	161	18	5,796	2,540	44
Australian Communications and Media Authority	9	86	12	10,031	2,153	21
Defence Housing Australia	10	27	6	3,834	2,086	54
National Capital Authority	11	32	8	1,499	1,248	83
Australian Securities and Investments Commission	12	328	3	1,307	1,076	82

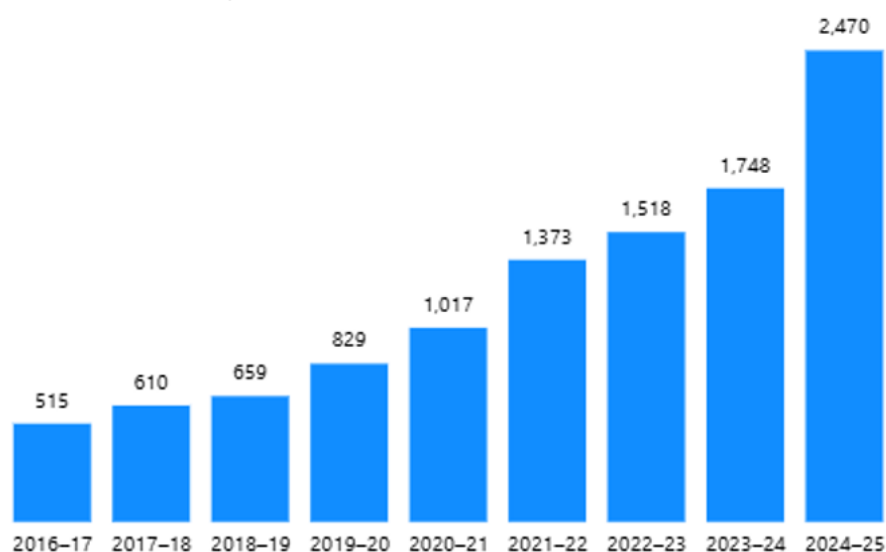
<b>Department of the Treasury</b>	13	231	22	9,131	854	9
<b>Gene Technology Regulator</b>	14	1	1	822	822	100
<b>National Offshore Petroleum Safety &amp; Environmental Management Auth.</b>	15	36	6	1,653	714	43
<b>Civil Aviation Safety Authority</b>	16	179	8	2,243	564	25
<b>Australian Trade and Investment Commission (Austrade)</b>	17	37	13	1,920	398	21
<b>Australian Broadcasting Corporation</b>	18	147	3	1,855	345	19
<b>Assistant Minister for Productivity, Competition, Charities and Treasury</b>	19	7	1	288	288	100
<b>Commonwealth Scientific and Industrial Research Organisation (CSIRO)</b>	20	62	3	2,240	283	13
<b>Total top 20</b>	<b>21</b>	<b>3,193</b>	<b>516</b>	<b>168,488</b>	<b>64,963</b>	<b>39</b>
<b>Others</b>	22	40,263	24	19,096	218	1
<b>Total</b>		<b>43,456</b>	<b>540</b>	<b>187,584</b>	<b>65,181</b>	<b>35</b>

## Appendix F

### IC reviews received by OAIC from 2016–17 to 2024–25



### IC reviews finalised by OAIC from 2016–17 to 2024–25<sup>1920</sup>



<sup>19</sup> In 2021-22 the OAIC received additional funding for provided for \$4.0M over the forward estimates for the appointment of an FOI Commissioner, Assistant Commissioner FOI and 2 support staff, \$1.0M p.a. ongoing.

<sup>20</sup> Note in 2024-25 there was a significant increase in Department of Home Affairs deemed refusal matters requiring revised processes and use of regulatory powers to promote timely resolution.