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The Hon Mark Dreyfus KC MP

Attorney-General
Parliament House
Canberra ACT 2600

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Response to Statement of Expectations – 2023

Dear Attorney-General

Thank you for your correspondence of 9 March 2023 attaching your Ministerial Statement of Expectations – 2023. I appreciate your acknowledgement of the invaluable work done by the Office of the Australian Information Commissioner (OAIC) as the independent national regulator for privacy and freedom of information.

Statement of Intent

This statement sets out my intentions as the accountable authority of the Office of the Australian Information Commissioner regarding how I will meet the expectations outlined in the Ministerial Statement of Expectations of 9 March 2023.

Overview

I acknowledge the OAIC's role as the independent national regulator for privacy and freedom of information. Under the *Australian Information Commissioner Act 2010* (AIC Act), the OAIC's functions are:

- privacy functions that are conferred by the *Privacy Act 1988* and other legislation including:
 - resolving complaints about, investigating, determining, or commencing civil penalty proceedings in relation to, an act or practice that might breach the Privacy Act in response to a complaint or on the Commissioner's own initiative

- conducting a privacy assessment of whether an entity is maintaining and handling personal information in accordance with the Privacy Act
- involvement in code development
- administering the eligible data breach notification scheme
- directing an agency to give the OAIC a privacy impact assessment about a proposed activity or function
- recognising external dispute resolution schemes to handle particular privacy-related complaints
- providing information and advice on privacy to government, individuals, businesses and agencies
- freedom of information functions conferred by the *Freedom of Information Act 1982* (FOI Act) and other legislation including:
 - promoting awareness and understanding of the FOI Act among ministers, agencies and the community
 - providing FOI information, advice, assistance and training to ministers, agencies and the community
 - issuing guidelines on the interpretation and administration of the FOI Act (to which agencies and ministers must have regard when applying the FOI Act)
 - overseeing the Information Public Scheme, including assisting agencies to publish information under the scheme and reviewing agency compliance with the scheme
 - monitoring, investigating and reporting on compliance by agencies and ministers with the FOI Act
 - preparing an annual report on the basis of information and statistics collected from agencies and ministers
 - investigating complaints from the public about FOI administration by agencies, and undertaking own motion investigation of agency actions; issuing an implementation notice (following an investigation) requiring an agency to specify the action it will take to implement the Commissioner's recommendations

- reviewing an agency's or minister's FOI request decision upon application from a person, and
- government information policy functions, including reporting to the Attorney-General on matters relating to Australian Government information management policy and practice, including FOI and privacy in relation to proposals for legislative change.

The OAIC will exercise its functions and powers in good faith and to the best of its abilities.

Principles of regulator best practice

The OAIC will exercise our functions and powers in accordance with the principles set out in the *Regulator Performance Resource Management Guide (December 2022)*.

1. Continuous improvement and building trust

The OAIC has adopted a holistic view, continuously monitoring and seeking to improve our performance, capability and culture, and building trust and confidence in our regulatory functions.

The OAIC will:

- promote a regulatory approach that facilitates voluntary compliance with privacy and FOI obligations, including:
 - engaging with regulated entities to provide guidance, promote best practice compliance, and identify and seek to address concerns as they arise
 - engaging with regulated entities which notify the OAIC of a data breach incident to assist them to comply with their relevant reporting and privacy obligations
 - conducting assessments of whether personal information is being maintained and handled by entities in accordance with their obligations
 - promoting privacy impact assessments
- promote public confidence in the regulatory activities of the OAIC by publicising actions taken to address non compliance and dealing with entities that are not complying with their obligations

- ensure transparency and accountability around the use of our regulatory powers including by publishing relevant guidance about the regulatory action taken by the OAIC
- develop people, processes and systems that will allow the OAIC to conduct and finalise regulatory action as promptly as practicable.

2. Risk based and data driven

The OAIC manages risks proportionally and maintains essential safeguards by leveraging data, evidence-based methods and digital technology to support our activities and reducing administrative burden on those we regulate.

The OAIC will:

- support effective risk management and cultivate a positive risk culture by maintaining a Risk Management Framework
- use resources and capability to contribute to significant government priorities involving personal information handling such as the Cyber Security and digital identify strategies.

3. Collaboration and engagement

The OAIC is transparent and responsive to the needs of the community and those we regulate, genuinely engaging with and seeking feedback from stakeholders on our performance and implementing regulation in a modern and collaborative way.

The OAIC will:

- seek opportunities to engage and consult genuinely with stakeholders
- be receptive to feedback and diverse stakeholder views
- seek to increase transparency in decision-making processes
- provide up-to-date, clear and accessible guidance and information to assist regulated entities with compliance
- engage with fellow regulators and use information sharing powers to achieve effective and efficient regulatory outcomes.

Innovation and regulatory change

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

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

Addressing Australian Government policy priorities and objectives

The OAIC will remain responsive to government priorities and objectives.

Regulatory reform agenda

The OAIC will contribute to the deregulation process by:

- seeking opportunities to remove duplication and streamline processes to improve efficiency and lift productivity
- acting in accordance with regulator best practice in our decision making, policies, processes and communication practices to maximise transparency and minimise compliance costs
- applying the *Regulator Performance Resource Management Guide* to our regulatory functions to assess our performance and engagement with stakeholders
- incorporating the principles of regulatory best practice, the Ministerial Statement of Expectations 2023 and the OAIC's Statement of Intent into its Corporate Plan and Annual Report
- monitoring its performance against the principles of regulatory best practice through our performance measurement framework.

Regulatory functions

The OAIC will prioritise our regulatory functions. In order to engage with and be responsive to the community's expectations of its regulatory bodies, the OAIC will take a contemporary approach to our regulatory role in promoting and upholding Australia's privacy and FOI laws.

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

Privacy in the online environment

The OAIC will focus on regulatory activities to address privacy harms that arise from the practices of online platforms and services that impact individuals' choice and control.

The OAIC will promote awareness of privacy risks, leveraging the insights gained through the 2023 Australian Community Attitudes to Privacy Survey, to improve the ability of Australians to manage privacy choices.

Consumer Data Right

As co-regulator of the Consumer Data Right (CDR), the OAIC will continue to collaborate with the Australian Competition and Consumer Commission in taking an integrated approach to embedding compliance and enforcement policies, project planning and risk management activities. As the CDR expands we will provide further guidance for participants and consumers about the privacy safeguards in the CDR system and how the OAIC will exercise our regulatory powers.

Relationship with Minister and portfolio

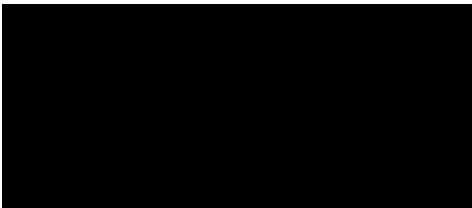
I acknowledge the role the OAIC has in assisting you, as responsible Minister, and the Government to respond promptly to privacy law and FOI issues. I undertake to provide you with accurate and timely advice on any significant issues that may arise.

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

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

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

Yours sincerely



Angelene Falk
Australian Information Commissioner Privacy Commissioner

30 June 2023