



**Australian Government**

**Office of the Australian Information Commissioner**

# **ACT Justice and Community Safety portfolio: Open and transparent management of personal information**

Privacy assessment report

Territory Privacy Principles 1.3, 1.4 and 1.5

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## Part 1 — Introduction

- 1.1 This report outlines the findings of the first privacy assessment undertaken by the Office of the Australian Information Commissioner (OAIC) in relation to the Territory Privacy Principles (TPPs) found in the *Information Privacy Act 2014* (ACT) (the Information Privacy Act).
- 1.2 The OAIC examined the online privacy policies of seven Australian Capital Territory (ACT) public sector agencies within the Justice and Community Safety (JACS) portfolio and assessed these policies against the requirements of TPPs 1.3, 1.4 and 1.5.
- 1.3 OAIC staff conducted the assessment by way of a desktop review on 12 and 13 November 2014 at the OAIC's Sydney office.

### Background

- 1.4 The Australian and ACT Governments have a Memorandum of Understanding for the provision of privacy services by the OAIC in relation to ACT public sector agencies. Under the terms of this agreement, the OAIC completes one privacy assessment of an ACT public sector agency each financial year.
- 1.5 From 1 September 2014, the ACT's Information Privacy Act replaced the *Privacy Act 1988* (Cth) (Privacy Act) for ACT public sector agencies.
- 1.6 Under s 9 of the Information Privacy Act, a 'public sector agency' means:
  - a) a Minister; or
  - b) an administrative unit; or
  - c) a statutory office-holder and the staff assisting the statutory office-holder; or
  - d) a territory authority; or
  - e) a territory instrumentality; or
  - f) ACTTAB Limited; or
  - g) an ACT court; or
  - h) an entity prescribed by regulation.
- 1.7 Under s 13 of the *Public Sector Management Act 1994* (ACT), the ACT Chief Minister may establish administrative units, which make up the ACT public service. These administrative units, also known as 'directorates', are established by legislative instrument.<sup>1</sup>

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<sup>1</sup> At the time of this assessment, the *Administrative Arrangements 2014 (No 1)* instrument was still in force. ACT legislative instruments are available from [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

- 1.8 The Information Privacy Act also introduced the TPPs, which cover the collection, use, storage and disclosure of personal information, and an individual's access to and correction of that information.

## Part 2 — Description of assessment

### Assessment target

- 2.1 ACT public sector agencies within the JACS portfolio provide services to the ACT community and government in areas of justice, emergency preparedness and response, regulation of consumer and business activities, protection of rights and legislative drafting.<sup>2</sup>
- 2.2 The portfolio agencies included in this assessment were the JACS directorate and six independent statutory offices.<sup>3</sup> The JACS directorate is an ‘administrative unit’ for the purposes of the Information Privacy Act. A list of the portfolio agencies included in this assessment is at Appendix A.
- 2.3 Further, in preliminary discussions with the JACS directorate, the OAIC was advised that the directorate is comprised of internal ‘line areas’ that are covered by one central JACS directorate privacy policy (the central policy). A number of these line areas have their own websites so, as part of this assessment, the OAIC also looked at how six JACS’ line area websites linked to, or displayed, the central policy.

### Objective and scope

- 2.4 The objective of the assessment was to assess the online privacy policies of seven agencies within the JACS portfolio against specific and key requirements of TPP 1.
- 2.5 TPP 1 sets out how ACT public sector agencies should manage personal information in an open and transparent way. This enhances the accountability of ACT public sector agencies for their personal information handling practices and builds community trust and confidence in those practices.
- 2.6 A key component of TPP 1 requires ACT public sector agencies to have a TPP privacy policy explaining how personal information will be managed by the agency. The specific requirements for a TPP privacy policy are set out in:
- TPP 1.3, which states that a public sector agency must have a clearly expressed and up-to-date privacy policy
  - TPP 1.4, which sets out the content that a TPP privacy policy must include
  - TPP 1.5, which requires ACT public sector agencies to take reasonable steps to make the privacy policy available free of charge and in an appropriate format.
- 2.7 The online privacy policies of agencies within the JACS portfolio were assessed against the following four criteria drawn from TPPs 1.3, 1.4 and 1.5:

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<sup>2</sup> Justice and Community Safety Directorate, *About the Directorate*, viewed 17 December 2014, Justice and Community Safety website <[http://www.justice.act.gov.au/directorate\\_functions/about\\_the\\_directorate](http://www.justice.act.gov.au/directorate_functions/about_the_directorate)>.

<sup>3</sup> The OAIC notes that ACT Electoral Commission (also known as Elections ACT) no longer forms part of the ACT JACS portfolio.

1. Accessibility (TPP 1.5)
  2. Readability (TPP 1.3)
  3. Contactability (TPP 1.4)
  4. Content (TPP 1.4)
- 2.8 Assessors also looked at the websites of six line areas within the JACS directorate and how these websites linked to, or displayed, the central policy.
- 2.9 The scope did not include an assessment of:
- the actual or observed information handling procedures of the agencies or how the privacy policies operate in practice
  - the wider requirements of TPPs 1.2 and 1.6 which require ACT public sector agencies to take 'reasonable steps' to meet their obligations under TPP 1
  - TPPs other than TPP 1.3, 1.4 and 1.5.

### **Assessment technique**

- 2.10 This assessment was conducted as a risk based assessment. A risk based assessment focuses on identifying privacy risks to the effective handling of personal information by an entity in accordance with relevant legislation.
- 2.11 The OAIC identifies high and medium risks and, where appropriate, makes recommendations about how to address these risks. For more information about these privacy risk ratings, please refer to the OAIC's 'Risk based assessments – privacy risk guidance' at Appendix B.
- 2.12 The privacy policies that were not updated to reflect the TPP requirements were not assessed for Readability (TPP 1.3) and Content (TPP 1.4).

### **Assessment findings**

- 2.13 Assessors consider that two of the seven agencies assessed had online privacy policies in accordance with the requirements of TPPs 1.3, 1.4 and 1.5.
- 2.14 Assessors consider that the other five agencies' privacy policies presented a high risk that the requirements of TPPs 1.3, 1.4 and 1.5 were not being met appropriately. The assessors developed recommendations to address these identified risks.
- 2.15 Assessors found that two of the JACS line area websites did not link to, or display, the central policy which presents a high risk that the JACS directorate is not meeting the requirements of TPPs 1.3, 1.4 and 1.5. Recommendations have been developed to address these identified risks.

## Reporting

- 2.16 To the extent possible, the OAIC publishes final assessment reports in full or in an abridged version on its website. It is sometimes inappropriate to publish all or part of a report because of statutory secrecy provisions or for reasons of privacy, confidentiality, security or privilege.
- 2.17 This report has been published in full.

## Part 3 — Assessment issues

- 3.1 The following findings relate to the OAIC's consideration of the online privacy policies of the JACS portfolio agencies identified at Appendix A against the requirements of TPPs 1.3, 1.4 and 1.5.
- 3.2 The TPPs are available in full from [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

### Criterion 1 — Accessibility (TPP 1.5)

- 3.3 This criterion examined the accessibility of the agency's privacy policy on its website, taking into account the requirements of TPP 1.5.
- 3.4 TPP 1.5 requires an agency to take reasonable steps to make its privacy policy available free of charge, and in an appropriate form. This furthers TPP 1's stated objective of ensuring that personal information is managed in an open and transparent way.
- 3.5 An ACT public sector agency is generally expected to make its policy available by publishing it on its website. For example, a prominent link or privacy icon, displayed in the footer on each page of the website, could provide a direct link to the TPP privacy policy.
- 3.6 The policy should also comply with the Web Content Accessibility Guidelines (WCAG) 2.0 Guidelines (the Guidelines).<sup>4</sup> The Guidelines are applicable to all federal and state and territory government websites and contain a number of requirements for making web content more accessible for people with disabilities, including blindness and low vision, deafness and hearing loss, learning disabilities, cognitive limitations, limited movement, speech disabilities, photosensitivity and combinations of these.<sup>5</sup>
- 3.7 Web publication may not be appropriate in all circumstances and agencies, where relevant, should consider providing their privacy policy in other formats as well as on their website.

### Observations

- 3.8 Assessors made the following observations in relation to the seven portfolio agencies:
- two agencies had prominent links on their website homepage that directed visitors to a privacy 'splash' page that contained a link to a TPP privacy policy (provided as a PDF document)
  - one website provided a direct link from its homepage to a recently updated privacy policy in HTML format. However, the policy did not

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<sup>4</sup> In November 2009, the Online and Communications Council (OCC) endorsed WCAG 2.0, requiring all federal and state and territory government websites to conform to the guidelines. See <http://webguide.gov.au/accessibility-usability/accessibility/>

<sup>5</sup> For more information, see the Australian Government's, *Web Guide*, at <[www.webguide.gov.au](http://www.webguide.gov.au)>.

adequately address the content requirements of TPP 1.4 (that is, the policy was a website privacy policy, rather than a general agency privacy policy). This is addressed further below under Criterion 4 – Content

- two websites provided links to out-of-date privacy policies that did not reflect the new TPP requirements
- two websites did not have privacy policies or any other TPP privacy information
- no information could be located on the websites about whether the agencies provided access to their privacy policy in other non-web based formats.

3.9 Assessors made the following observations in relation to the six JACS directorate line areas:

- four line areas had prominent links on their website homepage that directed visitors either to a privacy splash page with a PDF version of the central policy or to the privacy page on the main JACS directorate website
- one line area's website provided a link to an out-of-date privacy policy that did not reflect the new TPP requirements
- one line area did not have a privacy policy or any other privacy related information on its website.

### **Privacy risks**

3.10 Failure to provide a TPP privacy policy free of charge and in an appropriate form reduces the ability for individuals to be meaningfully informed when making decisions about the management of their personal information. This places ACT public sector agencies at risk of not meeting their TPP 1.5 obligations.

3.11 Where the TPP privacy policies are provided in PDF only, there is a risk that some individuals may not be able to access the information. PDF does not necessarily have the required accessibility support to fully claim WCAG 2.0 compliance, so it generally cannot be solely relied upon for the provision of government information.<sup>6</sup>

3.12 TPP 1.5 recognises that web publication alone may not be appropriate in all circumstances. ACT public sector agencies may consider providing information on their websites, or in their TPP privacy policy, about how an individual can access or request the policy in another format.

3.13 In relation to the JACS line area websites, it is not immediately obvious that these line areas are part of and administered by the JACS directorate. The line areas that

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<sup>6</sup> For more information, see the Australian Human Rights Commission, *World Wide Web Access: Disability Discrimination Act Advisory Notes ver 4.0*, 2010, Australian Human Rights Commission website <[www.humanrights.gov.au](http://www.humanrights.gov.au)>

do not provide an easily accessible link to the central policy on their websites present a risk that the JACS directorate is not meeting its TPP obligations.

### **Recommendations**

3.14 It is recommended that:

- agencies without an online TPP privacy take active steps to publish a TPP privacy policy on their website
- agencies with out-of-date privacy policies on their websites review and update the policies to reflect the requirements of TPP 1.3, 1.4 and 1.5
- agencies publish their TPP privacy policies in both PDF and another accessible format, such as HTML, to ensure conformance with WCAG 2.0 accessibility requirements
- JACS line area websites without an online TPP privacy policy, or with out-of-date policies, take active steps to publish a TPP privacy policy or update website links to direct visitors to the central JACS privacy policy.

### **Criterion 2 – Readability (TPP 1.3)**

3.15 TPP 1.3 requires ACT public sector agencies to have a clearly expressed and up-to-date privacy policy about how they manage personal information. This criterion examined the ease with which the text of the privacy policy could be read and understood, taking into account the requirements of TPP 1.3. The assessors also assessed whether the policy was updated to reflect the TPP requirements.

3.16 At a minimum, a clearly expressed policy should:

- be easy to understand and use simple language. The OAIC recommends that privacy policies should aim to target a reading age level of around 14 years
- avoid jargon, legalistic and in-house terms
- only include information that is relevant to the management of personal information by the agency
- be presented in a style and length that makes it suitable for web publication.

3.17 Assessors tested ‘readability’ using the Flesch-Kincaid Reading East test.<sup>7</sup> The test uses a formula to calculate the readability of text by measuring word length and sentence length. Higher test scores indicate the text is easier to read, while lower scores suggest the text is more complicated and may be difficult to read. For example, a score of 80 would indicate high readability, while a score of 20 would indicate low readability. A score of 65 or higher on the test indicates the privacy policy can be easily read by a 13-14 year old.

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<sup>7</sup> The test can be found at the Readability Test Tool website <[www.read-able.com](http://www.read-able.com)>.

### **Observations**

- 3.18 Two agencies had updated TPP privacy policies on their websites and only those agencies were assessed in relation to Readability.<sup>8</sup>
- 3.19 Assessors made the following observations:
- the privacy policies assessed had low readability scores indicating the text may be difficult to read by some audiences
  - one agency showed a Flesch-Kincaid score of 25.4, indicating the policy should be easily understood by a 22-23 year old. The other agency showed a Flesch-Kincaid score of 39.6, indicating the policy should be easily understood by a 17-18 year old
  - the two privacy policies were easy to navigate and were of a suitable length and structure for web publication (both were 7-10 pages long). The policies used a contents page and headings, which enabled the OAIC to find information within the policy easily.

### **Privacy risks**

- 3.20 TPP 1.3 requires that privacy policies should be clearly expressed and up-to-date. At a minimum a clearly expressed policy should be easy to understand, easy to navigate and only include information that is relevant to the management of personal information by the entity. The low readability scores of the privacy policies indicate that some audiences may find the texts difficult to understand, which places agencies at risk of not meeting the requirements of TPP 1.3.
- 3.21 Privacy policies that are difficult to navigate may hinder an individual's ability to understand the information contained in the policy. Navigability could be improved by using a layered approach to assist an individual's understanding of the information in the policy. A layered approach means providing a condensed version of the full policy to outline key information, with direct links to the more detailed information in the full policy.<sup>9</sup>

### **Recommendation**

- 3.22 It is recommended that portfolio agencies review existing TPP privacy policies (or those that will be developed) for readability to ensure the policy reflects the requirements of TPP 1.3.

## **Criterion 3 – Contactability (TPP 1.4)**

- 3.23 TPP 1.4 requires a TPP privacy policy to include information about how an individual may access their personal information and how an individual may make a complaint. This necessarily requires a privacy policy to provide the contact details for an individual to make such requests.

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<sup>8</sup> Website specific privacy policies were not assessed.

<sup>9</sup> For an example of a layered approach, see OAIC, *Summary of the OAIC's APP Privacy Policy*, OAIC website <[www.oaic.gov.au](http://www.oaic.gov.au)>

3.24 This criterion expanded on the requirements of TPP 1.4 and the OAIC also looked at whether privacy related contact information was available elsewhere on the agency websites.

### ***Observations***

3.25 Assessors made the following observations:

- two agencies provided information about how an individual may access their personal information and submit a complaint in the TPP privacy policies available on their websites
- the remaining five agency websites did not have updated TPP privacy policies and also did not provide any privacy specific contact details, although all provided general agency contact information on their websites.

### ***Privacy risks***

3.26 TPP 1.4 requires that all ACT public sector agencies provide information about how an individual may make a privacy complaint or request access to their personal information.

3.27 Details should also be included about the procedure for complaining to the ACT public sector agency and, where applicable, the procedure for complaining to an external complaint body (in this case the OAIC).

3.28 Agencies could also update their general contact page to provide privacy specific contact details for individuals to seek access to their personal information or to make a privacy complaint.

### ***Recommendation***

3.29 It is recommended that agencies draft or update their TPP privacy policies to include specific information about how an individual may access their personal information and how an individual may make a complaint.

## **Criterion 4 – Content (TPP 1.4)**

3.30 TPP 1.4 contains a non-exhaustive list of the specific content that must be covered in a TPP privacy policy. This includes:

- the kinds of personal information collected and held by the agency
- how personal information is collected and held
- the purposes for which personal information is collected, held, used and disclosed
- how an individual may access their personal information and seek its correction

- how an individual may complain if the agency breaches the TPPs and how the complaint will be handled
- whether the agency is likely to disclose personal information to overseas recipients and, if so, the countries in which such recipients are likely to be located if it is practicable to specify those countries in the policy.

### **Observations**

3.31 Assessors made the following observations:

- one agency had a privacy policy on its website that appeared to have been updated in September 2014. However, the policy only dealt with the collection, use and disclosure of personal information via the website and did not cover the wider information handling practices of the agency or the content requirements of TPP 1.4
- two agencies had online TPP privacy policies that addressed the topics listed in TPP 1.4. However, the TPP privacy policies were fairly generic and did not provide the OAIC with specific information to understand how each agency would deal with an individual's personal information. For example, the sections relating to how an agency uses or discloses personal information and the possible overseas disclosures of personal information largely mirrored or re-stated the requirements of the TPPs, rather than setting out how each agency actually handled (or intended to handle) the personal information it collected.
- generally, the TPP privacy policies contained minimal detail about the circumstances in which the agencies collected, held, used and disclosed sensitive information.

### **Privacy risks**

- 3.32 TPP privacy policies must describe the information handling practices of the agency. Policies that only deal with the collection, use and disclosure of personal information by the agency's website are not sufficient to address the requirements of TPP 1.4 and place the agency at risk of not meeting its obligations under TPP 1.
- 3.33 Failure by agencies to provide sufficient detail about how they handle personal information may lead to an agency not complying with APP 1.4 obligations. When drafting TPP privacy policies, ACT public sector agencies should be as specific as possible when describing their information handling practices, as this will provide clarity and trust.
- 3.34 Agencies could also list sensitive information separately and provide more detail about the circumstances in which it is collected, held, used and disclosed. This will provide clarity for individuals regarding the management of sensitive information of common concern such as health information.

3.35 Agencies with diverse information handling practices may consider developing separate privacy policies to cover the different types of personal information handled and different information handling practices.<sup>10</sup>

### **Recommendations**

3.36 It is recommended that:

- agencies review their privacy policies to provide greater detail about their information handling practices, particularly around the purposes for which personal information is usually used and disclosed and circumstances in which the overseas disclosure of personal information may occur
- agencies review their privacy policies to ensure the content requirements of TPP 1.4 are adequately addressed noting that online privacy policies dealing only with the management of personal information collected via a website is not sufficient to address these requirements.<sup>11</sup>

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<sup>10</sup> For example, see OAIC, *Human resources privacy policy*, OAIC website <[www.oaic.gov.au](http://www.oaic.gov.au)>.

<sup>11</sup> For guidance around how to draft a privacy policy, see OAIC, *Guide to developing an APP privacy policy*, OAIC website <[www.oaic.gov.au](http://www.oaic.gov.au)>. While this guide has been developed in reference to the APPs, it should be of assistance to ACT public sector agencies given the similarities between the APPs and TPPs.

## Part 4 – Summary

### Summary of privacy risks

- 4.1 Assessors identified the following as high risks that some JACS portfolio agencies need to address to ensure they are effectively meeting the requirements of TPPs 1.3, 1.4 and 1.5:
- two agency websites did not contain an online TPP privacy policy
  - two agencies had out-of-date privacy policies on their websites
  - one agency had an updated privacy policy that dealt only with the management of personal information collected via the website, rather than a broader privacy policy outlining how the agency handles personal information
  - two agencies published their TPP privacy policies in PDF only
  - two agencies had TPP privacy policies with low readability scores indicating that the texts may be difficult to understand by some audiences
  - four agencies did not have adequate information, either in the available privacy policy or elsewhere on their website, describing how an individual may make a privacy complaint or request access to their personal information
  - two agencies did not provide enough specific information in their TPP privacy policies about their information handling practices, particularly around the purposes for which personal information is usually used and disclosed and circumstances in which the overseas disclosure of personal information may occur.
- 4.2 Assessors found that two of the JACS line area websites did not link to, or display, the central policy. This presents a high risk that the directorate is not meeting its TPP obligations as it is not immediately apparent when accessing the websites that the line areas are part of, and are administered by, the JACS directorate.

### Summary of recommendations

- 4.3 To address the issues outlined above, it is recommended that:
1. agencies without an online TPP privacy policy take active steps to publish a TPP privacy policy on their website
  2. agencies with out-of-date privacy policies on their websites review and update the policies to reflect the requirements of TPP 1.3, 1.4 and 1.5
  3. agencies publish their TPP privacy policies in both PDF and another accessible format, such as HTML or Word, to ensure conformance with WCAG 2.0 accessibility requirements

4. agencies review their TPP privacy policies for readability to ensure the policy is clearly expressed
5. agencies review their privacy policies and provide more specific information about their information handling practices, particularly around the purposes for which personal information is usually used and disclosed and circumstances in which the overseas disclosure of personal information may occur
6. agencies review their privacy policies to ensure the content requirements of TPP 1.4 are adequately addressed noting that online privacy policies dealing only with the management of personal information collected via a website is not sufficient to address these requirements
7. JACS line area websites without an online TPP privacy policy, or with out-of-date policies, take active steps to publish a TPP privacy policy or update website links to direct visitors to the central policy.

## Appendix A – JACS portfolio agencies assessed

The online privacy policies of the following JACS portfolio agencies were examined during the assessment:

1. Justice and Community Safety directorate
2. ACT Electoral Commission (known as Elections ACT)<sup>12</sup>
3. ACT Human Rights Commission
4. Office of ACT Director of Public Prosecutions
5. Legal Aid Commission (known as Legal Aid ACT)
6. Public Advocate of the ACT
7. Public Trustee for the ACT

The websites of the following JACS directorate line areas were also examined during the assessment:

- a. ACT Corrective Services
- b. ACT Emergency Services
- c. ACT Government Solicitor
- d. ACT Parliamentary Counsel's Office
- e. Office of Regulatory Services
- f. Victim Support ACT

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<sup>12</sup> The OAIC notes that ACT Electoral Commission (also known as Elections ACT) no longer forms part of the ACT JACS portfolio.

## Appendix B: Risk based assessments – privacy risk guidance

Privacy risk rating	Entity action required	Likely outcome if risk is not addressed
<p><b>High risk</b></p> <p>Entity <i>must</i>, as a high priority, take steps to address mandatory requirements of Privacy legislation</p>	<p><b>Immediate management attention is required.</b></p> <p>This is an internal control or risk management issue that if not mitigated is likely to lead to the following effects</p>	<ul style="list-style-type: none"> <li>○ Likely breach of relevant legislative obligations (for example, APP, TFN, Credit) or not likely to meet significant requirements of a specific obligation (for example, an enforceable undertaking)</li> <li>○ Likely adverse or negative impact upon the handling of individuals' personal information</li> <li>○ Likely violation of entity policies or procedures</li> <li>○ Likely reputational damage to the entity, such as negative publicity in national or international media.</li> <li>○ Likely adverse regulatory impact, such as Commissioner Initiated Investigation (CII), enforceable undertakings, material fines</li> <li>○ Likely ministerial involvement or censure (for agencies)</li> </ul>
<p><b>Medium risk</b></p> <p>Entity <i>should</i>, as a medium priority, take steps to address Office expectations around requirements of Privacy legislation</p>	<p><b>Timely management attention is expected.</b></p> <p>This is an internal control or risk management issue that may lead to the following effects</p>	<ul style="list-style-type: none"> <li>○ Possible breach of relevant legislative obligations (for example, APP, TFN, Credit) or meets some (but not all) requirements of a specific obligation</li> <li>○ Possible adverse or negative impact upon the handling of individuals' personal information</li> <li>○ Possible violation of entity policies or procedures</li> <li>○ Possible reputational damage to the entity, such as negative publicity in local or regional media.</li> <li>○ Possible adverse regulatory impacts, such as Commissioner Initiated Investigation (CII), public sanctions (CII report) or follow up assessment activities.</li> <li>○ Possible ministerial involvement or censure (for agencies);</li> </ul>
<p><b>Low risk</b></p> <p>Entity <i>could</i>, as a lower priority than for high and medium risks, take steps to better address compliance with requirements of Privacy legislation</p>	<p><b>Management attention is suggested.</b></p> <p>This is an internal control or risk management issue, the solution to which may lead to improvement in the quality and/or efficiency of the entity or process being assessed.</p>	<ul style="list-style-type: none"> <li>○ Risks are limited, and may be within acceptable entity risk tolerance levels</li> <li>○ Unlikely to breach relevant legislative obligations (for example, APP, TFN, Credit)</li> <li>○ Minimum compliance obligations are being met</li> </ul>

