



Australian Government

Office of the Australian Information Commissioner

Annual Report 2012–13



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Report
2012–13

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Australian Government

Office of the Australian Information Commissioner

Senator the Hon George Brandis QC
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney

I am delighted to provide to you, for presentation to the Parliament, the Office of the Australian Information Commissioner's (OAIC) Annual Report for the year ending 30 June 2013.

Subsection 63(1) of the *Public Service Act 1999* requires that I give this report to you to be tabled in the Parliament.

Section 30 of the *Australian Information Commissioner Act 2010* requires the Information Commissioner to prepare an annual report on the OAIC's operations, including a report on the freedom of information matters and the privacy matters defined in sections 31 and 32.

The Annual Report includes reports on data collected from Australian Government ministers and agencies in relation to activity under the *Freedom of Information Act 1982*.

I certify that the OAIC has prepared a fraud risk assessment and fraud control plan and has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the OAIC. The OAIC has taken all reasonable measures to minimise the incidence of fraud.

I certify that this report has been prepared in accordance with the *Requirements for Annual Reports 2013*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John McMillan', is written over a light grey rectangular background.

Prof John McMillan
Australian Information Commissioner

2 October 2013

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Important information about this report

This Annual Report records the activities of the Office of the Australian Information Commissioner (OAIC) for 2012–13. It reports on ‘freedom of information matters’ and ‘privacy matters’, as required by ss 30, 31 and 32 of the *Australian Information Commissioner Act 2010*.

In each reporting year from 1982–83 until 2010–11, a separate report on the operation of the *Freedom of Information Act 1982* (FOI Act) was provided to Parliament, as required by s 93 of the FOI Act. These freedom of information (FOI) annual reports were prepared using data collected from Australian Government ministers and agencies subject to the FOI Act. In 2010–11, the FOI Annual Report was provided jointly by the Information Commissioner and the then Minister for Privacy and Freedom of Information.

A separate FOI Annual Report will not be published in 2012–13. The material previously published in such reports is available in this report or on the OAIC website. It is intended that the same approach will be adopted for future OAIC annual reports.

Guide to the report

Use this guide to assist you in locating the pages of the report of interest to you.

Chapter 1. Year in review

Chapter 1 provides a summary of significant issues, developments and achievements during the year, and an outline of the year ahead.

Chapter 2. Organisation overview

Chapter 2 explains the Office of the Australian Information Commissioner's (OAIC) role, functions and organisation structure and introduces its Commissioners. This section also provides an overview of the outcomes and Key Performance Indicators (KPIs) of the OAIC.

Chapter 3. Management and accountability

Chapter 3 contains an overview of the OAIC's administrative arrangements, management of human resources and corporate governance.

Chapter 4. Communication and engagement

Chapter 4 outlines the OAIC's communication and educational activities, and involvement in international networks and forums.

Chapter 5. Develop and implement information policy

Chapter 5 records the work of the OAIC in relation to its information policy functions.

Chapter 6. Privacy law reform and policy

Chapter 6 outlines the OAIC's work in preparing for the implementation of privacy law reforms due to commence in March 2014. It also describes other privacy policy activities of the OAIC including advice and submissions.

Chapter 7. Privacy compliance

Chapter 7 describes the work of the OAIC in relation to its privacy compliance functions, including handling enquiries and complaints, undertaking audits of government agencies, monitoring data-matching activities and providing guidance and advice.

Chapter 8. Freedom of information policy and compliance

Chapter 8 describes the OAIC's activities in relation to its freedom of information (FOI) functions, including handling enquiries and complaints, reviewing decisions and providing guidance and advice.

Chapter 9. Agency freedom of information activity

Chapter 9 describes the FOI activities of agencies and ministers in relation to the *Freedom of Information Act 1982*.

Appendices

The appendices contain the financial statements and material to support other sections of this report.

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This report is also available free of charge on the OAIC website at www.oaic.gov.au.

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Message from the Australian Information Commissioner, Prof. John McMillan



Three themes were prominent in the work of the Office of the Australian Information Commissioner (OAIC) in 2012–13.

Firstly, the OAIC received and resolved an increased number of privacy and freedom of information (FOI) enquiries, complaints, review applications and notifications. The reason is not that there was a noticeably higher error rate by government agencies and private organisations in dealing with information issues. Rather, members of the public valued the opportunity of approaching an independent agency for an explanation or resolution of an information issue or dispute.

The OAIC, as explained in this report, faced difficulty in handling this workload as expeditiously as we would have liked. The increased workload is nevertheless a pleasing confirmation of the assistance the OAIC is able to provide to the public, government agencies and private organisations.

Secondly, the OAIC took on special project work during the year that imposed a larger than usual resource demand. Major projects included preparing a suite of new guidelines and publications for the reforms to the *Privacy Act 1988* (Privacy Act) that commence in March 2014; contributing to a major independent review of the *Freedom of Information Act 1982* (FOI Act) and the *Australian Information Commissioner Act 2010*; and completing and publishing a survey of how government agencies manage public sector information, entitled *Open public sector information: from principles to practice*.

Each of those projects demonstrates in a similar way the dynamic quality of information issues in government and society. They are instances of the continuing need to appraise the adequacy of existing arrangements and approaches to managing, valuing and sharing information, and safeguarding personal information. Technological changes affecting all dimensions of information management are a common theme in most of the new information policy challenges the OAIC addressed in 2012–13. We look forward to continue playing a leadership role in public analysis of information trends and challenges in coming years.

The third major theme in OAIC work in 2012–13 was the importance of taking an integrated approach to information privacy, open government and public sector information management. Prior to the OAIC's establishment in 2010, privacy and FOI had operated for more than two decades as separate schemes, and were sometimes said to be in conflict. When they were brought together in a unified scheme in 2010 they were also set in a broader setting of information policy and practice, which became a third and distinct OAIC responsibility.

We have pursued the opportunity that those three functions provide of stressing the importance of taking an integrated approach to all information management issues. The overarching theme is the need for responsible information management by all organisations, government and private.

The opportunity of stressing the need for an integrated approach arises constantly in OAIC work. In reviewing FOI exemption claims, for example, the OAIC is frequently required to decide whether a document should be released to an FOI applicant or can be withheld by reason of personal information of a third party within the document. A number of the FOI cases decided in 2012–13 were applications initiated by third parties objecting to the release of personal information. The OAIC has arranged for all three Commissioners — the Information, Privacy and Freedom of Information Commissioners — to decide those cases so as to bring a broader perspective to the cases.

Beyond individual cases, the OAIC was frequently consulted by agencies in 2012–13 that were keen to extract greater value from the public sector information they held by making it more readily available to other agencies, researchers and the community. At the same time the agencies were keenly anxious to ensure that personal information privacy was not jeopardised. The OAIC followed up on these discussions by issuing draft guidance on de-identification of data that emphasised the need to take a balanced approach to sharing data while safeguarding privacy. This has also been a strong theme in the OAIC's advocacy for government agencies to proactively publish more information in pursuit of open government ideals.

The OAIC has a role under both the FOI and Privacy Acts of issuing guidelines on the interpretation and administration of both Acts. FOI Act Guidelines were substantially published in 2011, and draft guidelines on the new Privacy Act reforms were being released progressively in 2013. At many points there has been a need to ensure convergence in the guidance given on both Acts, and more generally the OAIC is striving to ensure that there is consistency in the style and approach in both sets of guidelines.

The opportunity to pursue the theme of integration in information policy and practice may arise in a new setting in 2013–14. The Government announced in May 2013 that Australia would join nearly sixty other countries in the international Open Government Partnership (OGP) that was established in 2011. A principal requirement for a country joining the OGP is that it must prepare, after community consultation, a country (or national) action plan that explains the framework of agencies and policies that play a role in information policy and practice, and identifies reform projects the country will embark upon.

The OAIC has expressed support for Australia joining the OGP and offered to play an active role in developing a national action plan. In developing a plan, the OAIC would continue to advocate the need to take an integrated approach to all information management issues.

Message from the Freedom of Information Commissioner, James Pople



Trends are beginning to emerge from the first two years of operation of the recent reforms to the *Freedom of Information Act 1982* (FOI Act). Generally, the reforms continue to be successful. But there are still some agencies in which a pro-disclosure culture has not been fully embraced. There are also parts of the freedom of information (FOI) system that are feeling the strain brought about by some of the reforms, and by competition for decreasing resources. Delays in processing — by agencies and by the Office of the Australian Information Commissioner (OAIC) — are preventing the system from being as effective as it could be. Access to government information is easier and cheaper, but not always quicker. This means that the reformed FOI Act is not fulfilling its potential to enhance public access to government information, and the full value of that national resource is not being achieved.

The information presented in this Annual Report reflects continuing high levels of activity across all parts of the FOI system in 2012–13:

Requests for access to documents

- Australian Government ministers and agencies received 24,944 FOI requests, an increase of only 0.7% on the previous year. In each of the two years before that, there was an average increase of 7.1%. 69.3% of all requests were received by three agencies: the Department of Immigration and Citizenship (DIAC), the Department of Veterans' Affairs and the Department of Human Services.
- The number of requests for personal information was almost unchanged (down 0.8%). These were 79.5% of all requests.
- The number of requests for other than personal information increased by 7.1%. In the three years since 2009–10 (which was the last full year before the reforms commenced) there has been an 85.1% increase in these requests. This has had a significant impact on agencies because requests of this type are typically more complex and can require more agency resources to process than requests for personal information.

Practical refusal / request consultation processes

- Agencies sent almost two-and-a-half times as many notices of intention to refuse a request because a 'practical refusal reason' existed, but only 42.7% of those requests were subsequently refused or withdrawn (down 38.8%). This may indicate that the request consultation process is working better: that agencies are giving applicants sufficient information to refine the scope of their requests or to better identify the documents sought, so that their requests can be processed.

Determination of FOI requests

- Agencies and ministers determined 21,764 requests (down 2.2%).
- Access was granted, in full or in part, in 89.4% of all requests determined (up 1.0%).

- One or more exemptions were claimed in 55.3% of all requests determined (up 13.1%). The most-claimed exemption is still the personal privacy exemption (in 20.6% of requests determined).

Timeliness

- 85.6% of all requests determined were processed within the applicable statutory time period (down 2.9%).
- The number of requests that agencies had on hand (that is, requests upon which a decision had not been made) at the end of the year increased by 10.2%. This suggests that some agencies are finding it hard to meet their FOI obligations within their existing resources.

Amendment applications

- Twelve agencies received 2854 applications for amendment of personal records (down 18.9%), and one agency (DIAC) received more than 98% of them.
- Agencies determined 2893 amendment applications (down 9.2%). A decision to amend or annotate a person's personal record was made in response to 72.9% of applications (down 0.1%).

Internal review

- Agencies made 485 decisions on internal review (up 14.7%), and affirmed the original decision in 48.0% of those reviews (down 0.4%).

Cost and charges

- The reported cost attributable to agency compliance with the FOI Act was \$45.231 million (up 8.4%). Even when previous figures are adjusted for inflation, this is the highest annual cost since the FOI Act commenced in 1982. (The adjusted cost in 1984–85 is the next highest.)
- Agencies recovered \$236,754 in FOI charges. This is 0.52% of the total cost, the lowest proportion for 27 years.

In its three core areas of FOI compliance activity, the OAIC:

- received 507 applications for Information Commissioner review (IC review — up 11.2%) and closed 419 (up 65.6%)
- received 148 FOI complaints (up 17.5%) and closed 149 (up 49.0%), and
- processed 2290 notifications and extension of time requests (up 2.4%).

The OAIC also completed an own motion investigation into DIAC's handling of complex and sensitive FOI requests. And two vexatious application declarations were made.

In 2012–13, for the first time, information was collected from agencies and ministers on disclosure log activity. The OAIC also surveyed 191 agencies on their compliance with their obligations under the information publication scheme in the FOI Act. The survey results indicate that agencies are complying positively with most of the five key IPS criteria set out in the Information Commissioner's guidelines.

The OAIC continued to promote awareness and understanding of the FOI Act and its objects. It did this through updating most parts of the guidelines, publishing several new fact sheets and agency resources, and providing a range of other guidance.

Wherever possible, the OAIC aims to conciliate IC reviews. Of the IC reviews closed in 2012–13, 89 (21.2%) were concluded through published decisions by one of the three Commissioners, because conciliation was not possible. Ministers' and agencies' decisions were affirmed in 65.2% of those decisions, and set aside or varied in the remainder. This rate of affirmed decisions indicates a high level of understanding, by ministers and agencies, of their obligations under the FOI Act.

The most frequently raised issue in FOI complaints about agencies continues to be processing delay. Many of these arose from poor communication on the part of an agency, failing to keep the FOI applicant informed about the progress of their request. The OAIC continues to encourage agencies to communicate better with FOI applicants, and to take reasonable steps to assist applicants to make their requests, as the FOI Act requires agencies to do.

The OAIC has taken a number of steps to improve its efficiency in dealing with IC reviews and complaints, to address the backlog that it has had since early in its operation. New procedures have been developed. Non-ongoing and seconded staff have been assigned to work on IC reviews and FOI complaints on a temporary basis. The result has been a significant improvement in closure rates, noted above.

But, despite these improvements, on 30 June 2013 the OAIC had on hand 447 IC reviews (up 25.2%) and 75 FOI complaints (the same as a year earlier). Of those matters on hand, 105 IC reviews (23.5%) and two complaints (2.7%) were more than 12 months old. This level of delay has a detrimental effect on the FOI system.

The OAIC is not funded to maintain the staffing levels that led to its improved closure rates in 2012–13. We will continue to look for ways to improve our processing of IC reviews and FOI complaints within existing resourcing. But it is highly unlikely that that level of performance can be attained again without additional resourcing or a reduction in the volume of work coming in (neither of which is likely in the medium term), or changes to the FOI legislative framework.

In October 2012, the Attorney-General announced that Dr Allan Hawke AC would undertake a review of the operation of the FOI Act and the *Australian Information Commissioner Act 2010*. The Information Commissioner and I made extensive submissions to the review. Our submissions recommended changes that would improve the FOI system as a whole, and the OAIC's capacity to deal with IC reviews, complaints and extensions of time. We also pointed out several technical deficiencies in the FOI Act. Dr Hawke's report was tabled after the reporting period.

The information presented in this annual report shows that the FOI system is generally performing well. But some structural change is needed to improve the timeliness of FOI decision making, so that the underlying vision of the FOI Act — government information managed for public purposes as a national resource — can be fully realised.

Message from the Privacy Commissioner, Timothy Pilgrim



The most significant reforms to the *Privacy Act 1988* (Privacy Act) since its commencement, passed through the Parliament in November 2012. As I foreshadowed in last year's annual report, these reforms include a new set of Australian Privacy Principles (APP), which will replace the existing Information Privacy Principles that apply to Australian and Norfolk Island Government Agencies, and the National Privacy Principles that apply to many private sector organisations. Part IIIA of the Privacy Act, which regulates the handling of personal credit

information, was also significantly amended to provide for, amongst other things, the inclusion of additional information sets to assist entities participating in the credit system to make decisions about the provision of credit. As well, the amendments to the Privacy Act provide the Commissioners with broadened code making powers and the ability to undertake performance assessments of private sector organisations under the APPs. The Commissioners will also have access to additional enforcement powers for resolving investigations including obtaining enforceable undertakings and, in the case of serious or repeated breaches, seeking civil penalties through the courts.

The amendments will commence on 12 March 2014 and their passage was a pivotal moment as it refocused both Australian Government Agencies and private sector organisations on the need to ensure that they respect the personal information entrusted to them by the community. There will be a considerable amount of work to do for all entities covered by the Privacy Act, and for the Office of the Australian Information Commissioner (OAIC), in preparation for the commencement date. The OAIC has already started to develop new guidance material to assist entities to comply with the APPs, the credit provisions of Part IIIA and to understand how the OAIC will utilise its new regulatory tools. In all, approximately 50 sets of key guidance material, information sheets and various legislative instruments will need to be ready for 12 March 2014.

While this is a daunting task for the OAIC, given that it has received no additional resourcing for this implementation work, I am extremely pleased that by 30 June 2013 we had already released guidance material to assist entities to understand the key changes between the current sets of principles and the APPs, and the key changes to the credit provisions.

In December 2012, I requested that the Australian Retail Credit Association, in consultation with industry, commence the process of developing the draft Credit Code of practice to support the new credit provisions of the Privacy Act. The draft code is to be lodged with the OAIC by 1 July 2013.

Another important step was taken in respect of privacy reform during the year and that was the introduction into the Parliament of the Privacy Act (Privacy Alerts) Bill 2013. This Bill introduces a scheme for the mandatory reporting of serious breaches of personal information. I believe that this Bill will further the protection of personal information in Australia. While the Bill has passed the House of Representatives and had gained additional support via the Senate Legal and Constitutional Committee, it had not been debated in the Senate prior to it rising for the winter recess on 28 June 2013. It is my hope that the Bill will be passed by the Parliament in the near future.

The reforms to the Privacy Act will make it more responsive to the rapidly changing environment in which personal information flows. These flows are being facilitated by new and exciting technological advances. This statement is almost becoming redundant in the context of the speed that these advances take place. We now expect that we will regularly see new ways in which personal information can be collected and used. Two pieces of technology that have caught the community's attention during the year because of their potential for doing just this were aerial drones, with the capacity to film while being controlled, and Google Glass, a wearable device that allows the user to collect, access and transmit information.

While such technology captures the community's attention it also captures the attention of privacy regulators globally. During the year privacy regulators around the world continued to foster greater international cooperation in the light of such developments. Through forums such as the Global Privacy Enforcement Network run under the auspices of the OECD, the APEC Cross Border Privacy Enforcement Arrangement and regional groupings of Privacy Regulators such as the Asia Pacific Privacy Authorities Forum, concerted efforts were undertaken to build a coordinated approach to regulating the protection of personal information as it moves around the globe.

People remain extremely sensitive to what is happening with their personal information. The release of information relating to the US PRISM system reignited an important and complex debate about the collection of personal information for the purpose of national security. While privacy laws around the world recognise that in democratic societies such as ours privacy cannot be absolute, it is even more important that where collection of individuals' personal information occurs for the broader interests of the community, there is as much transparency of these activities as possible. There is also need for the information to be protected in terms of strictly limiting its use, destroying unnecessary information in a timely way and ensuring that those entities with access to the information are subject to strict protocols and oversight by independent bodies. Greater transparency of these activities would help to go some way in engendering increased community trust.

So that the OAIC can be better placed to understand the contemporary views of the community, in terms of their expectations of privacy, the OAIC commenced its Community Attitudes to Privacy survey in June 2013. This survey has been run regularly for over a decade and is a key tool for assisting the OAIC to prioritise its activities under its privacy functions. This research has been highly valued over the years by many organisations that also use it to better understand their customers' expectations.

To that end, I welcomed the sponsorship of this year's survey by the Commonwealth Bank, Henry Davis York and McAfee, and look forward to the release of the results in late 2013.

It is an exciting time to be working in the privacy field. The large scale of these reforms present interesting challenges and opportunities for all of us as privacy laws are brought up to date with technology and contemporary approaches to privacy regulation. It also means that it is more important than ever for entities covered by the Privacy Act to be vigilant when handling personal information.

Chapter One

Year in review

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Chapter One

Year in review

The central aim of the Office of the Australian Information Commissioner (OAIC) is to protect the community's information rights and to advance information policy in government. The OAIC's vision is that information will be managed by government as a national resource that is accessible and useable, and that personal information held by government and non-government organisations will be respected and protected.

The OAIC's work is undertaken in three particular ways:

- promoting and enforcing the legal rights conferred upon the community by the *Freedom of Information Act 1982* (FOI Act) to obtain access to Government documents
- safeguarding protection of personal information, by ensuring that Government agencies and private sector organisations manage information in accordance with the standards of the *Privacy Act 1988* (Privacy Act)
- advancing government information policy and practice, with a particular focus on principles and strategies that support open government.

The OAIC is keenly committed to identifying and responding to the changing information environment in government and society.

The OAIC's workload continued to grow in 2012–13. This trend reflects the active interest of the Australian community in both exercising their right to seek access to government information and ensuring that the privacy of their personal information is respected.

The OAIC handled:

- 18,205 phone enquiries
- 3142 written enquiries (11.3% increase on previous year)
- 1496 privacy complaints (10.2% increase)
- 61 data breach notifications (33% increase)
- 507 applications for Information Commissioner (IC review) (11.2% increase)
- 148 freedom of information (FOI) complaints (17.5% increase)
- 2,290 agency extension of time notifications and requests.

Achievements and challenges in 2012–13

The OAIC undertook a significant restructure in 2012–13. This was primarily in response to two pressures.

The first was a growing increase and backlog in FOI complaints and IC reviews. The OAIC appointed a special team from in and outside the office to address this problem. The team was highly successful in doing so, as reflected in statistics discussed elsewhere in this report. However, this was only a temporary and resource intensive measure that could not be continued beyond 2012–13.

At the same time, the OAIC faced a decrease in its overall staffing levels, partly due to budgetary tightening across government. The staffing and workload pressures were the subject of questioning during Senate Estimates hearings in 2012–13. It was pointed out that the initial staffing estimate for the OAIC when it was being established was around 100 staff to carry out the three FOI, privacy and information policy functions. At times during 2012–13 the staffing level was closer to 70 budget-supported positions.

In response to these pressures an organisational re-structure commenced in March 2013 with the aim of delivering greater efficiencies in a constrained budgetary environment. The OAIC's work was reorganised around three divisions in the office. An important element of the new structure is that the OAIC's work across all functions and divisions continue to be integrated, reflecting a theme of responsible information management.

Another element of the restructure is that the work had to be prioritised. A consequence is that less work could be undertaken in some areas. These included own motion investigations and auditing, training and monitoring compliance with the Information Publication Scheme.

Despite this challenging environment significant progress was made in 2012–13.

Information Policy

The OAIC continued to work with Government agencies to embed the open public sector information principles. Following a survey of 191 agencies in 2012, the OAIC released an interim report of its findings in August 2012, and a full report in February 2013 — *Open public sector information: from principles to practice*. The report found that Australian Government agencies are actively embracing an open access and proactive disclosure culture, but many policy challenges and practical obstacles remain.

2012–13 was also a significant year for information policy with the Government signalling its intention to join the Open Government Partnership, which is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency and open government. The OAIC has supported this step. Australia's involvement in the Open Government Partnership will require the preparation of a national action plan designed to advance the open government agenda in Australia.

Throughout 2012–13, the OAIC was an active participant in a range of forums that considered open government developments. These included the Big Data Strategy Group, the Prime Minister’s Science Engineering and Innovation Council, and an applied research project conducted by the Treasury Board of Quebec.

The Information Advisory Committee continued to provide support to the Information Commissioner on a range of information policy issues including the OAIC’s submissions to the Hawke Review of the FOI Act and the *Australian Information Commissioner Act 2010* (AIC Act).

Privacy

Law reform continued to dominate the OAIC’s privacy workload during 2012–13, at a time when privacy complaints and enquiries continued to rise. The most significant reforms to the Privacy Act for 25 years were passed by the Parliament in November 2012. The OAIC began work on approximately 50 sets of key guidance material for Government agencies and the private sector for implementation of the reforms on 12 March 2014. The OAIC was not given any additional resourcing but by 30 June 2013, this work was well advanced.

A significant achievement was the publication of a *Guide to information security: reasonable steps to protect personal information*, launched as part of Privacy Awareness Week 2013. Again, Privacy Awareness Week continued to grow, and with privacy law reform implementation on the horizon there was great interest this, year with almost 160 partners, a record number, joining the OAIC in its campaign.

The OAIC continued to consolidate its role as the independent regulator of privacy compliance for Australia’s eHealth system. During 2012–13, an audit program was commenced and a significant number of eHealth publications were released including enforcement guidelines and consumer fact sheets.

The Privacy Advisory Committee continued to carry out its role of advising the Information Commissioner on matters relevant to his functions and to engage in and promote protection of individual privacy in the private sector, Government and the community. The Privacy Advisory Committee provided advice on a range of issues throughout 2012–13, importantly on privacy law reform implementation.

Freedom of Information

It was a significant year in the area of freedom of information as 2012–13 saw the 30th anniversary of the FOI Act. Over the last 30 years there has been a significant cultural change in the attitude of government agencies towards the release of information and the OAIC continues to work towards reinforcing and building on that cultural shift. Since 1982, nearly 1 million requests have been made to Australian Government agencies and it is now routine for Government agencies not only to release but publish documents.

The 30th anniversary gave the OAIC the opportunity to reflect on the success of the FOI Act, but also where there are areas for reform.

In terms of the OAIC's own FOI work, an own motion investigation into the Department of Immigration and Citizenship's (DIAC) handling of complex and sensitive FOI requests was finalised. This was the OAIC's first FOI own motion investigation. Since the finalisation of the investigation, and consequent steps taken by DIAC to address the findings, it is pleasing to see that the number of complaints received by the OAIC about DIAC decreased substantially.

On 31 October 2012, the Attorney-General announced that Dr Allan Hawke AC would undertake a review of the FOI Act and the AIC Act. The OAIC provided two submissions addressing matters raised in the terms of reference and suggesting 35 proposals for reform. The Information Commissioner's recommendations in the 2012 *Review of Charges under the Freedom of Information Act 1982*, to which the Government is yet to respond, were also included in the OAIC's Hawke review submissions. The Hawke review was released in August 2013, outside the reporting period.

Financial performance

The Australian National Audit Office provided an unqualified audit opinion on the OAIC's financial statements for 2012–13.

During the year the OAIC faced the challenge of unfunded capital expenditure relating to an Electronic Document and Records Management System, new office fit-out for the Canberra site, and development and implementation of a new website. These requirements placed added pressure on the OAIC's already limited ability to maintain a viable workforce.

2013–14: Outlook

The OAIC will continue to operate in an environment of increasing demand and reduced resources. The financial environment continues to be tight and the OAIC expects it to remain so over the next few budget cycles.

The OAIC has many challenges and opportunities ahead in 2013–14, particularly with implementation of new privacy laws that confer additional functions and powers on the OAIC. Work will also continue on developing a National Action Plan for the Open Government Partnership.

It is certain that 2013–14 will be another busy, challenging and rewarding year in the area of open government and privacy protection.

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Chapter Two

Organisation overview

Role

The Office of the Australian Information Commissioner (OAIC) is an independent statutory agency, established under the *Australian Information Commissioner Act 2010* (AIC Act).

The OAIC brings together in one agency the functions of information policy advice and independent oversight of privacy protection and freedom of information (FOI) access.

Functions

The three main functions of the OAIC are:

- Information Commissioner functions — advising the Australian Government and agencies on information policy and management practice
- privacy functions — protecting the privacy of individuals by ensuring proper handling of personal information in accordance with the *Privacy Act 1988* (Privacy Act) and other legislation
- freedom of information functions — promoting awareness of the public's right of access, under the *Freedom of Information Act 1982* (FOI Act), to documents held by the Australian Government.

The OAIC carries out a range of activities in these three core areas, including monitoring statutory compliance, investigations, audits, complaint handling, review of decisions, education and awareness, and providing advice to and promoting responsible information handling within government and the private sector.

Commissioners

The OAIC is headed by the Australian Information Commissioner, supported by the Privacy Commissioner and the Freedom of Information Commissioner.

Australian Information Commissioner — Prof. John McMillan

Prof. John McMillan AO was appointed Australian Information Commissioner on 1 November 2010.

Prof. McMillan was formerly the Commonwealth Ombudsman from 2003–10; and the Integrity Commissioner (Acting) for the Australian Commission for Law Enforcement Integrity in 2007. He is an Emeritus Professor of the Australian National University.

Prof. McMillan was a founding member of the Freedom of Information Campaign Committee, which led the public campaign for enactment of the FOI Act. He is a National Fellow of the Institute of Public Administration Australia, a Fellow of the Australian Academy of Law, and former President of the Australian Institute of Administrative Law.

Privacy Commissioner — Timothy Pilgrim

Mr Timothy Pilgrim was appointed Privacy Commissioner on 19 July 2010.

Mr Pilgrim was first appointed to the former Office of the Privacy Commissioner as Deputy Privacy Commissioner in February 1998. Prior to this he held senior management positions in a range of Australian Government agencies, including the Small Business Program within the Australian Taxation Office and the Child Support Agency.

Freedom of Information Commissioner — James Pople

Dr James Pople was appointed Freedom of Information Commissioner on 1 November 2010.

Before that, he worked for 12 years in the Australian Attorney-General's Department (AGD), with six years as First Assistant Secretary. Before joining AGD, he was a judge's associate, then Deputy Registrar of the High Court of Australia.

Dr Pople has degrees in law and arts, and is admitted as a barrister and a solicitor. He is also an Adjunct Professor of the Australian National University (in the College of Law and the College of Engineering and Computer Science) where he conducted his doctoral research in artificial intelligence and law.

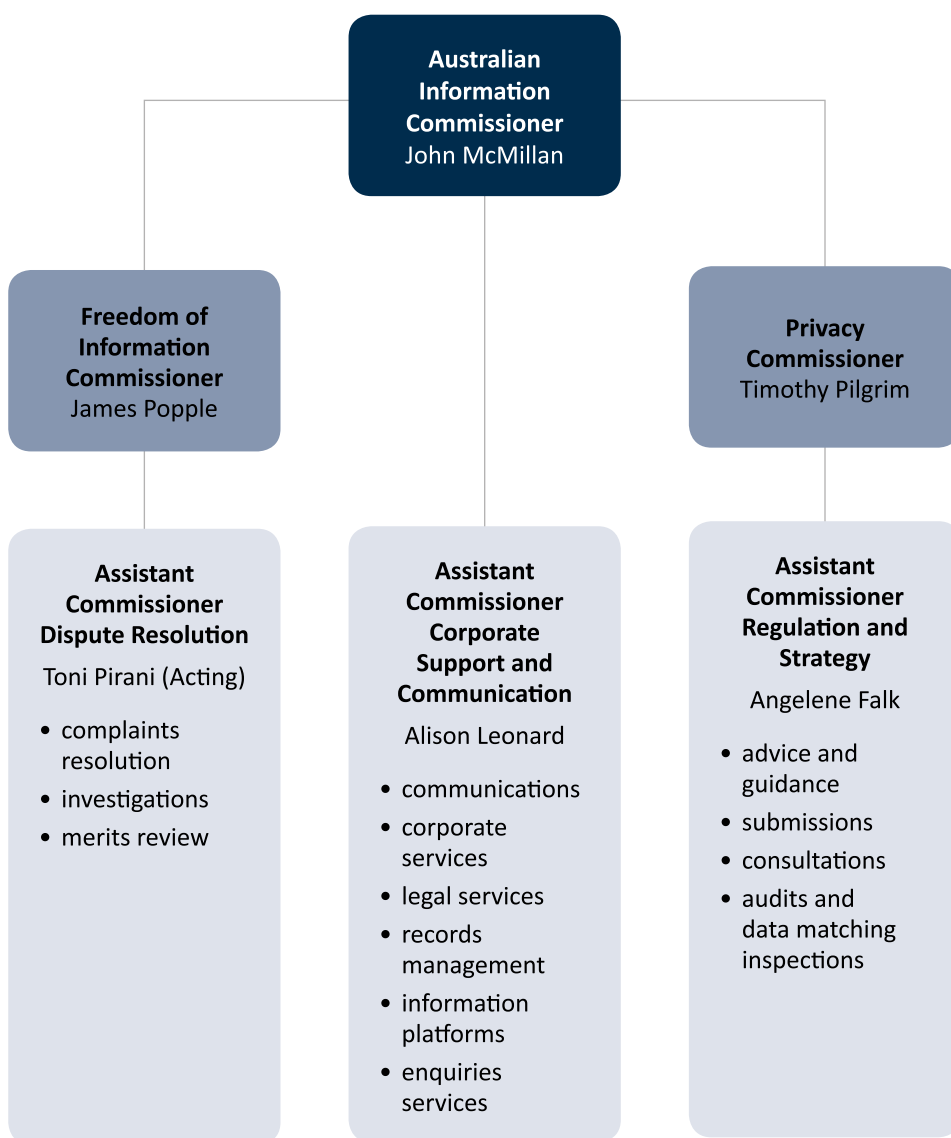
Organisation structure

The OAIC is co-located in Sydney and Canberra and has three Branches. In 2012–13, the OAIC undertook an organisational restructure. The new structure comprises three branches that each undertake work in relation to the OAIC's three functions, of information policy, privacy and FOI. This integrated structure offers flexibility in resource allocation, provides staff the opportunity to grow knowledge and skills, and enables the OAIC to find efficiencies through maximising use of skill-sets, prioritisation and work allocation.

The integrated branches are:

- Regulation and Strategy Branch — provides advice on the application of the Privacy Act, the FOI Act and information policy. This Branch also carries out own motion investigations and audits.
- Dispute Resolution Branch — carries out complaint resolution, investigations and merits review.
- Corporate Support and Communication Branch — supports the OAIC through providing corporate, legal and communications services. This Branch also manages the OAIC website and public enquiries line.

Chart 2.1 Organisation structure as at 30 June 2013



Outcome and program structure

The OAIC had one outcome for 2012–13: Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of information commissioner, freedom of information and privacy functions.

In order to achieve its outcome, the OAIC focused on four key areas:

- promoting open government by encouraging proactive publication of government information
- participating in developing and implementing a national information policy framework
- promoting and securing the protection of personal information
- enhancing the OAIC's capacity to achieve its vision of 'An Australia where government information is managed as a national resource and personal information is respected and protected'.

The OAIC had one program (Program 1.1) related to the outcome: complaint handling, compliance and monitoring, and education and promotion.

The OAIC's program objectives for 2012–13 were to:

- conduct reviews of FOI decisions made by ministers and agencies
- monitor, investigate and report on agency compliance with the FOI Act
- assist agencies in implementing the Information Publication Scheme under the FOI Act
- review agency compliance with the Information Publication Scheme
- promote awareness and understanding of the FOI Act and its objectives
- investigate complaints about compliance with the Information Privacy Principles and the National Privacy Principles
- inquire into acts or practices that may be interferences with privacy
- conduct audits of the personal information handling practices of Australian Government and Australian Capital Territory Government agencies and other organisations covered by the Privacy Act
- foster public discussion and conduct educational programs to promote proactive publication, access to information and privacy protection
- advise on information management in Australian Government agencies.

The OAIC's program deliverables and key performance indicators are set out in Tables 2.1 and 2.2 below. The tables set out information about the OAIC's performance in 2012–13 against each of the deliverables and key performance indicators. The tables also indicate where further information on each of these deliverables and key performance indicators is available in this report.

Three of the program deliverables in Table 2.1 are to finalise 80% of privacy and FOI complaints within a period of twelve months, and 80% of Information Commissioner reviews (IC reviews) within six months. The complaints that are treated as being finalised within twelve months are those received before or after 1 July 2012 and finalised within twelve months of receipt during the 2012–13 reporting year. Complaints received after 1 July 2012 and still on hand at 30 June 2013 are not counted in this analysis. Similarly, IC reviews that are treated as being finalised within six months are those received before or after 1 July 2012 and finalised within six months of receipt during the 2012–13 reporting year. IC reviews received after 1 July 2012 and not finalised within six months are counted in this analysis as cases that did not meet the six month finalisation target.

Table 2.1 OAIC Program 1.1 deliverables

Program deliverables	Key performance indicators	OAIC's 2012–13 performance	Further information
Privacy and FOI complaint handling services	80% of privacy complaints finalised within 12 months	93.5% of privacy complaints finalised within 12 months	Chapter 6
	80% of FOI complaints finalised within 12 months	88.7% of FOI complaints finalised within 12 months	Chapter 8
Privacy compliance activities	Audits finalised within six months	No audits were finalised within six months	Chapter 6
FOI merits review services	80% of IC reviews completed within six months	25.2% of IC reviews finalised within six months	Chapter 8
Information Publication Scheme compliance reviews	10 IPS compliance reviews completed	No IPS compliance reviews undertaken	Chapters 5 and 8
Privacy and FOI enquiries services	No specific targets for this indicator	No specific targets for this indicator	Chapters 6 and 8
Advice and assistance on information management practices across the Australian Government	No specific targets for this indicator	No specific targets for this indicator	Chapter 5
Promotion and educational activities	No specific targets for this indicator	No specific targets for this indicator	Chapter 4

Table 2.2 OAIC performance against key performance indicators

Key performance indicator	OAIC's 2012–13 performance	Further information
Australian Government agencies have implemented and comply with the requirements of the Information Publication Scheme and disclosure logs	The OAIC released its report <i>Open public sector information: from principles to practice</i>	Chapter 5
Contributions are made, as appropriate, to any reviews undertaken by the government of the operation of the FOI Act	The OAIC completed two submissions to the Hawke Review of the FOI Act and the AIC Act	Chapter 8
The OAIC <i>Principles on open public sector information</i> are developed and promoted	The OAIC continued to promote and embed the Principles for open public sector information through submissions, speeches and policy engagement	Chapter 5
Criteria for assessing the effective use of public sector information are developed	In February 2013 the OAIC released its report <i>Open public sector information: from principles to practice</i>	Chapter 5
OAIC merits review and complaint handling processes meet timeliness and quality benchmarks	The OAIC completed 419 IC reviews, 149 FOI complaints and 1504 privacy complaints	Chapters 6 and 8
Information and education products on privacy, FOI and information policy are developed and meet stakeholder needs	The OAIC produced a range of information and education products on privacy, FOI and information policy	Chapter 4
The Information Advisory Committee and Privacy Advisory Committee are supported in their role of providing advice to the OAIC	The OAIC hosted two Privacy Advisory Committee meetings and three Information Advisory Committee meetings	Chapter 4

Chapter Three

Management and accountability

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Chapter Three

Management and accountability

Overview

This chapter reports on the Office of the Australian Information Commissioner's (OAIC) corporate governance framework and activities, including the operation of the OAIC's audit and executive committees, strategic and business planning, risk management and people management.

The OAIC has a Memorandum of Understanding (MOU) with the Australian Human Rights Commission (AHRC) that covers the provision of corporate services to the OAIC. This includes financial, administrative, information and communications technology and human resources services. The OAIC also sub-leases its premises in Sydney from the AHRC under this arrangement. More information on the OAIC's MOU with the AHRC can be found in Appendix 5.

Corporate governance

The OAIC operates two standing committees — the Audit Committee and the Executive Committee.

Audit Committee

The OAIC Audit Committee's objective is to provide the Information Commissioner with independent assurance and assistance on the OAIC's risk, control and accountability responsibilities. The Audit Committee oversees the work of the OAIC's internal auditors, and ensures the Strategic Internal Audit Workplan provides appropriate coverage of the OAIC's strategic and operational risks.

The Audit Committee is chaired by the Assistant Commissioner Corporate Support and Communication, and has two independent members from the AHRC. During the year, another independent member, from the Attorney-General's Department (AGD), was appointed to the Audit Committee.

The AHRC provides secretariat support to the Audit Committee, and the OAIC's internal auditors and representatives from the Australian National Audit Office (ANAO) attend meetings of the Audit Committee as observers. The Audit Committee meets quarterly.

Executive Committee

The Executive Committee, comprising the Information Commissioner, Privacy Commissioner, Freedom of Information (FOI) Commissioner and the three Assistant Commissioners, meets weekly and oversees all aspects of OAIC business.

The Executive Committee's standing agenda covers business management and performance, finance, human resources, governance, risk management, external engagement and business planning. Key focus areas this year included:

- monitoring and managing the OAIC's growing workload
- budget monitoring
- reform of the *Privacy Act 1988* (Privacy Act)
- the OAIC's role in the eHealth system
- implementation of key projects such as the Electronic Document Record Management System and the redevelopment of the OAIC's website
- relocation of the Canberra site to new premises
- the review of the operation of the *Freedom of Information Act 1982* (FOI Act) and the *Australian Information Commissioner Act 2010* (AIC Act)
- the OAIC's organisational restructure.

External scrutiny

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

There were no reports on the operations of the OAIC by the Auditor-General, a parliamentary committee or the Commonwealth Ombudsman. However, Dr Allan Hawke AC prepared a report for the Attorney-General on the operation of the FOI and AIC Acts (the Hawke Review). The Hawke Review included analysis of the OAIC's structure and processes. The report was prepared during the reporting period but was not tabled until August 2013. Further information about the Hawke Review will be available in the 2013–14 Annual Report.

Strategic and business planning

The Strategic Plan 2011–14 sets out the OAIC's vision, purpose and values. The strategic goals contained in the plan are underpinned by annual business plans for each branch. The branch plans are reviewed each quarter by the Executive Committee.

Ethical Standards

The strategic plan includes the OAIC's values, developed with the input of staff and leaders, which complement the Australian Public Service (APS) Values and Code of Conduct.

During the year the OAIC revised its policies on managing conflicts of interest and gifts, to provide greater guidance to staff and supervisors in these areas.

Risk

The Executive Committee is supported in its management of risks by its internal auditors and the Audit Committee. The internal audit plan is developed each year based on risks identified in the OAIC Risk Register, and on risks shared by the OAIC and the AHRC. Audit reports and the risk register are regularly reviewed by the Executive Committee.

Statutory Office Holder and SES Remuneration

The terms and conditions of the OAIC's statutory office holders — the Information Commissioner, Privacy Commissioner and FOI Commissioner — are determined by the Remuneration Tribunal.

Remuneration for the OAIC's three Senior Executive Service (SES) officers is governed by determinations made by the Information Commissioner under s 24(1) of the *Public Service Act 1999*.

People management

During 2012–13, the OAIC's focus was on responding to the feedback provided by its staff to the Australian Public Service State of the Service Employee Census 2012.

The census provided a valuable opportunity for the OAIC to hear from its staff some 18 months after its establishment. The Leadership Team, made up of the Commissioners, Assistant Commissioners and Directors, responded to the feedback by implementing a range of measures including broader communications channels, more involvement for staff in planning and strategic processes, and a revised performance management system. The OAIC's staff consultation forum played a valuable role in clarifying and prioritising the census feedback, and in implementing the responses to the feedback.

The OAIC provided support to staff and managers through revising key human resources policies including: work health and safety, leave without pay, harassment policy, outside employment and its healthy lifestyle program.

Staffing profile

The OAIC's average staffing level for 2012–13 was 85.27 staff, with a turnover of approximately 24.7% per cent for ongoing staff. Twenty one ongoing staff resigned, retired or transferred to other Australian Government agencies. Twelve ongoing staff were engaged.

As at 30 June 2013, the OAIC had a total of 75.53 full-time equivalent (FTE) staff, including ongoing and non-ongoing employees. The OAIC's staffing profile as at 30 June 2013 is summarised in Table 3.1. There were no casual staff employed as at 30 June 2013.

As at 30 June 2013, the OAIC had 18 staff located in Canberra and 66 staff located in Sydney. Twelve ongoing staff had part-time or flexible working arrangements in place.

Table 3.1 Overview of staffing profile as at 30 June 2013

Classification	Male	Female	Full time	Part time	Total ongoing	Total non-ongoing	Total
Statutory Office Holders	3	0	3	0	0	3	3
SES Band 1	0	2	2	0	2	0	2
Executive Level 2 (\$107,962–\$123,211)	4	5	6	3	9	0	9
Executive Level 1 (\$92,948–\$99,426)	6	14	16	4	20	0	20
APS 6 (\$73,753–\$81,216)	7	24	26	5	31	0	31
APS 5 (\$66,884–\$ 70,710)	2	11	13	0	13	0	13
APS 4 (\$59,994–\$63,747)	4	2	6	0	6	0	6
Total	26	58	72	12	81	3	84

Workplace diversity

The OAIC recognises the importance of reflecting the community it serves through diversity in staffing. Currently 3.5% of staff have a non-English speaking background and 1.2% of the OAIC identify as Indigenous.

The OAIC participates in a joint Workplace Diversity Committee with the AHRC. Throughout the year, the OAIC promoted and supported events including NAIDOC Week and Harmony Day. Other strategies under the Workplace Diversity Plan focus on flexible and family-friendly workplace policies.

Remuneration

Staff members at the OAIC are employed under s 22 of the *Public Service Act 1999*. Salary ranges for the OAIC Enterprise Agreement 2011–14 are reflected in Table 3.1.

Performance pay

The OAIC had no performance pay arrangements in place.

Work health and safety

The OAIC and the AHRC are co-located in Sydney and share expertise and resources on Work Health and Safety (WHS) issues. The OAIC's Health and Safety representatives are members of the joint agencies' WHS Committee. The OAIC conducts regular site inspections as a preventative measure and there have been no incidents reported over the last year.

All new staff are provided with WHS information upon commencement. Ongoing support and assistance on WHS and ergonomic issues is provided to all staff. The OAIC offered flu vaccinations for interested staff.

The OAIC provides staff with a Healthy Lifestyle Allowance under the Enterprise Agreement, to promote health and fitness as a means of achieving work-life balance and improving productivity. The OAIC also provides access to independent, confidential counselling services through its Employee Assistance Program. No systemic issues have been identified through this service.

Learning and development

In 2012–13, 15 staff were supported to undertake formal external study through study leave, examination leave and/or financial assistance.

Staff attended a range of formal training courses offered by external providers including courses on leadership and staff management, media, social media, strategic communications, speech writing and project management. The OAIC also offers internal learning and development opportunities, including training on freedom of information and privacy law and policy.

The effectiveness of learning and development activities is evaluated through regular reviews between staff and their managers under the Performance Management Scheme.

Changes to disability reporting in annual reports

Since 1994, Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's *State of the Service Report* and the *APS Statistical Bulletin*. These reports are available at www.apsc.gov.au. From 2010–11, departments and agencies have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by a new National Disability Strategy which sets out a ten year national policy framework for improving life for Australians with disability, their families and carers. A high level report to track progress for people with disability at a national level will be produced by the Standing Council on Community, Housing and Disability Services to the Council of Australian Governments and will be available at www.fahcsia.gov.au. The Social Inclusion Measurement and Reporting Strategy agreed by the Government in December 2009 will also include some reporting on disability matters in its regular *How Australia is Faring* report and, if appropriate, in strategic change indicators in agency Annual Reports. More detail on social inclusion matters can be found at www.socialinclusion.gov.au.

Purchasing

The OAIC's purchasing procedures comply with the Commonwealth Procurement Rules issued by the Department of Finance and Deregulation. They address a wide range of purchasing situations, allowing managers flexibility when making purchasing decisions, provided arrangements comply with the Australian Government's core procurement principle of value for money.

Consultants

During 2012–13, one new consultancy contract was entered into involving total actual expenditure of \$125,630.

The OAIC engages consultants where it lacks specialist expertise or when independent research, review or assessment is required. Consultants are typically engaged to investigate or diagnose a defined issue or problem; carry out defined reviews or evaluations; or provide independent advice, information or creative solutions to assist in OAIC decision making.

Prior to engaging consultants, the OAIC takes into account the skills and resources required for the task, the skills available internally, and the cost-effectiveness of engaging external expertise. The decision to engage a consultant is made in accordance with the *Financial Management and Accountability Act 1997* and related regulations including the Commonwealth Procurement Rules.

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website www.tenders.gov.au.

ANAO access clauses

No contracts were let during the year for amounts of \$100,000 or more with provisions to exempt Australian National Audit Office access to the supplier's premises.

Exempt contracts

The OAIC did not have any exempt contracts.

Advertising and market research

The OAIC had a contract with Orima Research Pty Ltd to undertake a survey of all Australian Government agencies subject to the FOI Act regarding their compliance with the Information Publication Scheme obligations. This contract was entered during the 2011–12 financial year and totalled \$31,489. Total payment of \$31,489 was made to Orima Research Pty Ltd during the 2012–13 financial year.

The OAIC contracted with Wallis Consulting Group to commence the Community Attitudes to Privacy survey in June 2013. The contract with the Wallis Consulting Group totalled \$77,000. During 2012–13 total payments of \$38,500 were made to Wallis Consulting Group. Further information about the survey will be available in the 2013–14 annual report.

The OAIC did not undertake any campaign or non-campaign advertising in the 2012–13 financial year.

Grant programs

The OAIC does not have a grants program.

Memorandums of understanding

The OAIC receives funding for specific services under a range of MOUs. Details of financial MOUs are at Appendix 5.

Ecologically sustainable development and environment performance

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires the OAIC to report on how its activities accord with the principles of ecologically sustainable development (ESD).

The role and activities of the OAIC do not directly link with the principles of ESD or impact on the environment other than through its business operations in the consumption of resources required to sustain its operations.

The OAIC uses energy saving methods in its operation and endeavours to make the best use of resources.

Opening of new Canberra office

The OAIC Canberra site relocated to new premises at 4 National Circuit, Barton in October 2012. The Canberra site was previously located in temporary accommodation since the OAIC commenced in November 2010.

The new Canberra site is subleased from AGD.

The building was officially opened on 15 April 2013 by the Attorney-General, The Hon Mark Dreyfus QC MP. The event included a welcome to country and smoking ceremony and a presentation by the building owner.

The new Canberra site includes communication technology (including video conference facilities) to allow staff at the Canberra and Sydney sites to communicate effectively, as an integrated office.

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Communication and engagement

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Chapter Four Communication and engagement

Overview

The Office of the Australian Information Commissioner (OAIC) had an active year promoting privacy, freedom of information (FOI) and information policy issues to Federal Government agencies, industry and consumer groups, and the general public.

A major milestone was the launch of the OAIC's new website that integrates the three functions of privacy, FOI and information policy. The new website enables all OAIC information to be accessed at the one site. It was launched on 5 June 2013 and is available at www.oaic.gov.au.

A communications and education campaign about privacy law reform for public and private sector organisations and the community commenced in December 2012. Activities undertaken have included a dedicated privacy law reform page on the OAIC website, short videos, new publications, a public consultation process and regular engagement with stakeholders. The campaign will continue throughout 2013–14.

The OAIC again featured prominently in media coverage about privacy law reform, data breaches, technology and society, own motion investigations and FOI review decisions. The office coordinated the largest Privacy Awareness Week to date, and the Commissioners spoke at a large range of forums and conferences. The OAIC also distributed its largest number of e-newsletters.

The OAIC continued to collaborate internationally, hosting international delegations, providing secretariat support to the Asia Pacific Privacy Authorities Forum (APPA) and supporting the Privacy Commissioner in his role as an Executive Committee member of the International Conference of Data Protection and Privacy Commissioners.

The OAIC was regularly contacted during the year by organisations and individuals for advice, assistance and guidance. There was frequent interaction between the OAIC and external contacts through our social media platforms and networks established by the OAIC for public and private sector information professionals.

Feature: Privacy Awareness Week 2013

Now in its eighth year, Privacy Awareness Week (PAW) is an annual awareness campaign coordinated by members of the APPA Forum since 2006. PAW continues to be an important event to promote privacy rights and responsibilities.

The OAIC marked Privacy Awareness Week 2013 (28 April to 4 May) with a campaign that focussed on privacy law reform. The aim of the week was to educate businesses and Federal Government agencies about their obligations in the lead-up to new privacy laws commencing on 12 March 2014.

PAW was launched at an OAIC breakfast by the Federal Attorney-General, the Hon Mark Dreyfus QC, MP. More than 190 privacy professionals gathered to hear from information security experts about what they must do to secure the personal information they hold about their clients and customers. The OAIC released a new *Guide to information security: reasonable steps to protect personal information*.

A record number of partners — 158 businesses, government agencies and community organisations — signed up to support PAW. The partners joined the OAIC in promoting privacy messages to the general community.

The OAIC also promoted privacy law reform through new resources that included posters, training materials, newsletter content and information for individuals, agencies, businesses and the not-for-profit sector.

Each year, the OAIC collaborates with other APPA members to produce an education product that is shared across the region. In 2013, the OAIC coordinated the production of an infographic that illustrated the importance of privacy across the Asia Pacific. The infographic was distributed in hard copy as well as on social media during PAW.

The Privacy Commissioner and Australian Information Commissioner participated in a number of private sector and public sector events that were held across the week.



Australian Information Commissioner Prof. John McMillan at the launch of Privacy Awareness Week 2013.

International and regional engagement

International liaison

The OAIC increased its support and liaison with privacy and freedom of information authorities across the globe. The OAIC regularly responds to requests for advice and other assistance from international colleagues. This includes hosting international delegations.

The Australian Information Commissioner and the Privacy Commissioner met with the Personal Data Protection Commission (PDPC) of Singapore in January 2013. The PDPC was set up to enforce Singapore’s new Personal Data Protection Act as well as regulate Singapore’s National Do Not Call Registry. The delegation visited the OAIC to learn more about Australia’s privacy framework and to discuss implementation and enforcement issues. Later in the year, the Privacy Commissioner was invited to deliver the keynote address at the launch of the PDPC in Singapore on 15 May 2013.

The OAIC also hosted delegations from Malaysia’s new Personal Data Protection Department, and the Central Information Commission of the Republic of Indonesia. The OAIC discussed the way in which the office was structured, staffing levels, complaint-handling processes and the OAIC work program.



The Privacy Commissioner Timothy Pilgrim with the delegation from the Personal Data Protection Commission, Singapore.

Association of Information Access Commissioners

The Association of Information Access Commissioners (AIAC) was established in 2010 by the statutory officers in each Australian jurisdiction responsible for FOI oversight, and development of information policy. The membership of the AIAC comprises Information Commissioners (Federal, NSW, NT, Queensland and WA), the Federal Freedom of Information Commissioner, the Queensland Right to Information Commissioner, the Victorian Freedom of Information Commissioner and the Ombudsman from other state jurisdictions. During 2012–13, the association met twice; once in August 2012 and once in March 2013.

The AIAC aims to exchange information and experience between offices about the exercise of oversight responsibilities, and to promote best practice and consistency in information access policies and laws. Matters discussed at meetings included case law developments, work practices for handling complaints and reviews, audit activity, staff training, public awareness activities, national regulatory reform, and international links and developments.

Asia Pacific Privacy Authorities

The OAIC continued to be actively involved in the APPA Forum by providing secretariat services and setting up and maintaining a new Forum website available at www.appaforum.org.

In 2012–13, the APPA membership expanded to 16 with two new member authorities — the National Authority for Data Protection, Peru, and the Superintendence of Industry and Commerce, Colombia.

In December 2012, members met in San Francisco, United States for the 38th APPA Forum. At the meeting, members discussed a range of topics including global privacy developments and enforcement, cross-border interoperability, online tracking, and mobile phone privacy. Members also had the opportunity to attend both Facebook and Apple headquarters to discuss privacy issues.

In October 2012, a number of APPA members wrote to the European Union's Article 29 Data Protection Working Party in support of its recommendations to Google about the transparency of Google's privacy policy. This followed work undertaken by the APPA Technology Working Group to assess Google's Privacy Policies on behalf of APPA members.

Privacy Authorities Australia

Privacy Authorities Australia (PAA) is a group of Australian privacy authorities that meets regularly to promote best practice and consistency of privacy policies and laws.

PAA membership includes the OAIC, privacy representatives from all states and territories, and the Attorney-General's Department as the Australian Government department responsible for privacy policy and advice. The OAIC hosted a PAA meeting in Sydney in May 2013. Topics discussed included national regulatory schemes, emerging technologies, the Document Verification Service and 'Big Data'.

Organisation for Economic Co-operation and Development

Thirteen privacy enforcement authorities from around the world, including Australia, joined forces to launch the Global Privacy Enforcement Network (GPEN) in September 2010. GPEN is designed to facilitate cross-border cooperation in the enforcement of privacy laws. As at 30 June 2013, GPEN had 31 member authorities, including 25 nations, five subnational authorities, and the European Union.

GPEN builds on the Organisation for Economic Co-operation and Development's (OECD) *Recommendation on Privacy Law Enforcement Co-operation* (2007), which recognised the need for greater cooperation between privacy enforcement authorities in cross-border privacy matters. The Recommendation states that member countries should foster the establishment of an informal network of privacy enforcement authorities and other appropriate stakeholders to discuss the practical aspects of privacy law enforcement cooperation.

In May 2013, the OAIC joined 18 other enforcement authorities from around the globe to participate in the first International Internet Privacy Sweep, an initiative of GPEN. The OAIC examined the 47 websites most used by Australians. Staff looked at each website's privacy policy to assess its accessibility, readability and content. The website privacy policies were also examined to see how they rated against the new transparency requirements under privacy law reform due to commence in March 2014. Results of the sweep will be released in late 2013.

More information about GPEN can be found at www.privacyenforcement.net.

Asia Pacific Economic Cooperation

In 2007, Asia Pacific Economic Cooperation (APEC) economies endorsed the APEC Data Privacy Pathfinder (the Pathfinder) to guide implementation of the APEC Privacy Framework.

The Cross-border Privacy Enforcement Arrangement (CPEA) has been developed as part of the Pathfinder initiative, and provides a framework for privacy regulators to cooperate and seek information and advice from each other on cross-border enforcement matters.

The CPEA came into force in July 2010. The OAIC is one of the CPEA's co-administrators, and is jointly responsible for conducting eligibility checks on privacy enforcement authorities that wish to participate in the CPEA. As of 30 June 2013, 22 privacy regulatory bodies, were signed up to CPEA, representing eight economies.

The Pathfinder also involves the development and implementation of a Cross-border Privacy Rules (CBPR) system. The system will provide guidance on the how the CBPR of businesses can meet the standards of the APEC Privacy Framework and be recognised across APEC economies. More information about CPEA can be found at www.apec.org.

34th International Conference of Data Protection and Privacy Commissioners

The 34th International Conference of Data Protection and Privacy Commissioners (ICDPPC) was hosted by the Personal Data Control and Regulatory Unit (URCDP) in Punta del Este, Uruguay, in October 2012. The theme of the conference was ‘Privacy and Technology in Balance’.

The ICDPPC adopted resolutions on a number of matters, including cloud computing, the future of privacy and the Uruguay Declaration on Profiling.

The Privacy Commissioner continued to hold his position on the Executive Committee of the ICDPPC. This role involved ensuring that the ICDDPC was suitably represented at other international privacy meetings throughout 2012–13.

Administrative Review Council

The Information Commissioner is an ex officio member of the Administrative Review Council under the *Administrative Appeals Tribunal Act 1975* (s 49(1)). Other ex officio members of the Council are the Commonwealth Ombudsman, President of the Administrative Appeals Tribunal, President of the Australian Law Reform Commission, and President of the Australian Human Rights Commission. Administrative support to the Council is provided by the Attorney-General’s Department.

The Council published a report in September 2012 on *Federal Judicial Review in Australia*. The Information Commissioner was a member of the sub-committee that took a leading role in preparing the report.

The Council did not hold any meetings in 2012–13.

Community Attitudes to Privacy survey

The OAIC launched its Community Attitudes to Privacy research on 13 June 2013. The survey explores changes in attitudes to privacy across a range of areas and considers new and emerging privacy issues associated with changes in technology.

The survey follows previous studies conducted by the former Office of the Privacy Commissioner in 2001, 2004 and 2007. The 2013 survey is being conducted by Wallis Strategic Market and Social Research on behalf of the OAIC, and involves 1000 people being asked to participate via landline and mobile numbers. The research is being sponsored by the Commonwealth Bank (Primary sponsor), Henry Davis York (Key sponsor), and McAfee (Sponsor). The results will be released in late 2013.

Media

In 2012–13, the OAIC responded to 314 media enquiries — a 10% increase on the previous year.

Significant media interest was generated by the passing of the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth), and the introduction of the Privacy Amendment (Privacy Alerts) Bill 2013.

Media interest was also generated during the year by high profile data breaches and release of investigation reports such as the OAIC's own motion investigation into the Department of Immigration and Citizenship FOI processing delays. While the majority of media enquiries related to privacy, the number of FOI-related enquiries also increased.

The OAIC Commissioners participated in a large number of interviews during the year across a range of media platforms including television, radio, print and online publications. The FOI Commissioner gave a media briefing to Adelaide-based journalists at the Australian Broadcasting Corporation.

The OAIC published 20 media releases in 2012–13.

Events

The 30th anniversary of the *Freedom of Information Act 1982* (FOI Act) was celebrated by the OAIC with an event at the National Portrait Gallery in Canberra on 27 November 2012. The event was attended by over 130 people from public and private sector bodies as well as members of the public. Attendees heard from the Information Commissioner and the FOI Commissioner, as well as speakers from government, academia, the media and the private sector, on the history, development and importance of the FOI Act and open government in Australia.



Dr James Popple making a presentation at the 30th anniversary of the FOI Act.

Speeches

The Commissioners delivered 59 speeches and presentations on a range of information-related issues. These speeches were delivered in a variety of forums, including national and international conferences and seminars. Speeches covered privacy law reform, open government, FOI reform and cultural change, information law and policy reform and the launch of reports and guidelines.

A list of all speeches given by Commissioners is in Appendix 6.

Publications

The OAIC released a record number of new publications during 2012–13.

Major publications included:

Freedom of Information

- *Information Publication Scheme: Survey of Australian Government Agencies — Compliance with IPS obligations*
- *FOI fact sheet 16 — Extensions of time*
- *FOI agency resource 14 — Administrative access schemes*
- Updated FOI guidelines

Privacy

- *Guide to information security: 'Reasonable steps' to protect personal information*
- *Guide to information security — summary*
- *Australian Privacy Principles and Information Privacy Principles — Comparison Guide*
- *Australian Privacy Principles and National Privacy Principles — Comparison Guide*
- *Australian Privacy Principles — a summary for APP entities*
- *Privacy agency resource 2: Privacy Act reforms — Checklist for APP entities (agencies)*
- *Privacy business resource 2: Privacy Act reforms — Checklist for APP entities (organisations)*
- Eight privacy fact sheets on a range of topics, including eHealth, Australian Privacy Principles and credit reporting

Information Policy

- *Open public sector information: from principles to practice*
- *Open public sector information: government in transition*

All OAIC publications can be accessed on the OAIC website.

Website

The OAIC officially launched its new website on 5 June 2013. The website integrated the former Office of the Privacy Commissioner website and the OAIC website.

The new website provides a single platform for information about privacy, FOI and information policy. Prior to launch a substantial review of content from both websites was undertaken. This work is ongoing. Future development of the new website will include blogs, comment facilities, online forms and enhanced social media engagement.

The website was designed with a range of Australian Government policies and other web standards in mind, particularly the web content accessibility guidelines (WCAG 2.0). WCAG 2.0 is Australian Government policy and ensures that web content is accessible by people with a range of disabilities. The website is designed to comply with WCAG 2.0 AA standard by December 2014.

Social media

The OAIC uses social media, e-newsletters and other web 2.0 platforms to promote and inform the public about the work of the OAIC. In 2012–13, the OAIC increased the frequency with which social media channels (Facebook, Twitter and YouTube) were used.

Twitter

The OAIC greatly increased its use of Twitter during 2012–13. At 30 June, the OAIC had tweeted 429 times and re-tweeted 949 times. The OAIC's Twitter account had 1450 followers. This is a 44% increase from last year.

YouTube

The OAIC produced a number of videos over 2012–13 that were hosted on YouTube. The most viewed video was about privacy law reform and had 1,498 views. The OAIC's YouTube channel had 3,383 views in total. This is an 88% increase from 2011–12.

Facebook

The OAIC continued to use Facebook to support communication campaigns such as Privacy Awareness Week. In 2012–13, the OAIC's Facebook account had 1,543 individual views and gained a further 119 'likes', bringing the total to 188.

OAICnet

In addition to using social media, the OAIC also communicates with stakeholders through subscription based e-newsletters. In 2012–13, OAICnet had 4013 subscribers, a 13.5% increase from last year. OAICnet is an external communication platform for distributing email messages to stakeholders, media, and interested members of the public. In 2012–13, the OAIC launched a new HTML format for e-newsletters to improve reader experience.

Networks and Committees

Information Contact Officer Network

The Information Contact Officer Network (ICON) is a network for FOI, privacy and information policy contact officers in Australian Government agencies. ICON also includes the Norfolk Island administration and, in relation to privacy, ACT Government agencies.

During 2012–13, ICON membership increased from 447 to 771, an increase of 72.4%. This dramatic increase demonstrates the value that agencies place on ICON and the information that it provides. Three ICON meetings were held this year: two meetings in Canberra and one in Sydney. The meetings are an important forum for information officers in government agencies to hear about and engage in the work of the OAIC. It also gives participants the opportunity to network and share knowledge with information professionals from other government agencies.

Topics discussed included agency compliance with the Information Publication Scheme (IPS), data breach notifications, privacy law reform, processing of FOI applications and Information Commissioner reviews. Guest speakers at ICON meetings included representatives from the Australian Taxation Office and the Public Interest Advocacy Centre.

Privacy Connections

The Privacy Connections Network (PCN) is a network for privacy professionals in the private sector. Since its relaunch in 2011–12, the membership has grown as the introduction of new privacy laws gets closer. As at 30 June 2013, the network had 1,028 members. A new e-newsletter was launched in February 2013 to keep members up-to-date with new publications, public consultations and events. Seven editions of the e-newsletter were published during 2012–13.

Privacy Advisory Committee

The Privacy Advisory Committee (PAC), established by the Privacy Act (s 82), met on two occasions during 2012–13, once in November 2012 and once in May 2013. The PAC is chaired by the Information Commissioner and other members are appointed by the Governor-General. The PAC's role is to advise the Information Commissioner on matters relevant to his functions and to engage in and promote protection of individual privacy in the private sector, government and the community.

The PAC has six members in addition to the Chair. Ms Barbara Robertson and Mr Michael Kidd were re-appointed to the Committee in October 2012.

The Committee provided advice on a range of issues including privacy law reform, the development of the Community Attitudes to Privacy survey, de-identification, data breach notification, eHealth and PAW 2013.

A list of PAC members can be found in Appendix 7. Minutes of PAC meetings are published on the OAIC website.

Information Advisory Committee

The Information Advisory Committee (IAC), established by the *Australian Information Commissioner Act 2010* (s 27), met two times during 2012–13, once in November 2012 and once in May 2013. The IAC is chaired by the Information Commissioner; other members are appointed by the Minister. The IAC has 11 members in addition to the Chair. The IAC's role is to assist and advise the Information Commissioner in the performance of the information commissioner functions.

During 2012–13, Ms Su McCluskey was appointed to the Committee, after Ms Stephanie Foster's term expired.

The meetings discussed the OAIC's report *Open public sector information: from principles to practice*, the 2013 Information Policy Conference, the 30th anniversary of the FOI Act, Australia's membership of the Open Government Partnership, the OAIC submission to the Hawke Review and technological developments such as 'Big Data'.

A list of IAC members can be found in Appendix 7. Minutes of IAC meetings are published on the OAIC website.

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Chapter Five

Develop and implement information policy

Overview

The Office of the Australian Information Commissioner's (OAIC) information policy work is based on three key principles:

- Government information, as declared in the objects clause of the *Freedom of Information Act 1982* (FOI Act), is a national resource that should be managed for public purposes.
- Open public sector information (PSI) enhances Australian democracy and stimulates economic and social innovation and community engagement with government.
- The quality of government policy formulation, decision making and service delivery depends on effective information management.

In 2012–13, the OAIC continued to work with agencies and the community to embed those principles in government practice. A central goal is to build a government culture of proactive publication, open data and community engagement. This requires that all agencies are committed to working in a consistent manner to manage PSI in a way that makes it readily discoverable, accessible and reusable by business and the community, while ensuring compliance with privacy, security and secrecy obligations.

Proactive disclosure of government information remains a fundamental element of Australia's commitment to open government; this is reflected in the objects clause of the FOI Act and is given effect, in part, through the Information Publication Scheme (IPS) and agency disclosure logs. The OAIC undertook further work with Australian Government agencies in 2012–13 to promote and facilitate a transition to a culture of open access and proactive publication of PSI. Key aspects of the OAIC's information management activities are set out below.

Open public sector information: government in transition

In April 2012, the OAIC surveyed Australian Government agencies about their PSI management practices (PSI Survey). The survey sought information on the extent to which agencies had adopted and implemented the OAIC's *Principles on Open Public Sector Information* (Open PSI Principles), and the challenges faced by agencies in implementing an open access culture.

There was a strong agency response to the PSI Survey. Of 245 agencies invited to take part, 191 responded — a response rate of 78%. The PSI Survey was supplemented by focus groups hosted by the OAIC in June 2012. Eighteen agencies of different sizes and functions participated in the focus groups.

In August 2012, the OAIC published preliminary findings from the initial analysis of the PSI Survey results and feedback from the focus groups. The interim results centred on the finding that the Australian Government is in the process of transitioning to an open access and proactive disclosure culture. Specifically, the interim report provided an overview of the challenges reported by agencies, identified areas of open government practice in which agencies were experiencing success, and suggested areas in which agencies could benefit from assistance.

Open public sector information: from principles to practice

In February 2013, the OAIC published its full report on the PSI Survey results and feedback from the focus groups — *Open public sector information: from principles to practice* (PSI Report).

The PSI Report:

- summarises the main findings of the PSI Survey, and identifies the Open PSI Principles that agencies found most challenging, and the priority areas for action to address those challenges
- presents the survey results for each of the eight Open PSI Principles, and examines the issues encountered by agencies in implementing each principle
- analyses the contemporary challenges facing Australian Government agencies in implementing an open access agenda that is supported by robust information management and governance.

The key finding of the PSI Report is that Australian Government agencies are actively embracing an open access and proactive disclosure culture, but many policy challenges and practical obstacles remain. The challenges include making government information discoverable and useable, moving to a default position of open access to information, and allocating sufficient resources to robust information asset management.

The PSI Report identified five priority areas for action to meet those challenges:

- greater agency awareness of government policies on open PSI
- further development and refinement of those policies
- better collaboration among agencies
- more investment in data sharing infrastructure
- further examination of the challenges and opportunities for the galleries, libraries, archives and museums sector.

The report also noted that a transition to a proactive disclosure culture is more successful when built on four elements: agency leadership, officer innovation, community engagement and investment in information infrastructure. Those four elements were identified by agencies themselves as key issues in developing national information policy.

Other information policy activities

Information Advisory Committee

The Information Commissioner chairs the Information Advisory Committee (IAC). The role of the IAC is to assist and advise the Information Commissioner in promoting sound information policy and practice in Australian Government. Further information about the IAC can be found in Chapter 4.

Big Data Strategy Working Group

The OAIC is a member of the Big Data Strategy Working Group, convened by the Australian Government Information Management Office (AGIMO). The Group is tasked with developing the Australian Government Big Data Strategy.

The Big Data Strategy will set out the actions that Government can and is taking to harness the opportunities afforded by big data analytic tools, while protecting personal privacy. During 2012–13, the OAIC worked with other group members to ensure that privacy and broader open government and information policy issues were appropriately considered in the development of the strategy. A consultation draft of the strategy was released for public comment in June 2013.

Open Government Partnership

The Open Government Partnership (OGP) is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency and open government. The OGP agenda is consistent with Australia's open government agenda as expressed in the report of the Government 2.0 Taskforce, *Engage: Getting on With Government 2.0* (December 2009), and the Australian Government's *Declaration of Open Government* made in July 2010.

On 10 January 2013, the Information Commissioner wrote to the Attorney-General's Department (AGD) supporting Australia's participation in the OGP. The Information Commissioner's letter outlined the timetable for Australia's possible membership, the tasks to be undertaken (including the preparation of a country action plan), and the work that the OAIC could carry out subject to appropriate resourcing.

In May 2013, the Attorney-General announced Australia's commitment to join the OGP. During 2013–14, the OAIC will engage with relevant Government agencies to help advance the preparation of a national action plan. It is expected that an active consultation will be undertaken with state governments, industry and civil society groups, and the public generally.

Chief Scientist's breakthrough actions for innovation

A submission to the Prime Minister's Science Engineering and Innovation Council (PMSEIC) was made in response to their inquiry into the breakthrough actions necessary to drive innovation and productivity growth in Australia. The OAIC suggested that the PMSEIC consider open PSI and open publicly funded information as one of the breakthrough actions that should receive the explicit support of the Australian Government to drive innovation and productivity growth in Australia.

In February 2013, Chief Scientist Professor Ian Chubb released five breakthrough actions governments could take to make Australia a more innovative nation. One of the breakthrough actions (Number 2) is to 'strengthen business access to publicly-funded research expertise, infrastructure and data'.

Quebec research project

In 2012–13, the OAIC participated in an applied research project conducted by the Treasury Board of Quebec and the National School of Public Administration in Quebec. The research project explores the strategies adopted by governments that have been successful in opening PSI through an open government policy, and how those governments have measured and evaluated its impacts on three areas of open government: transparency, participation and collaboration. The OAIC agreed to participate in the study as it fitted within the OAIC strategic goals of measuring and improving Australia's performance against international information policy best practice.

Submissions and advice

During 2012–13, the OAIC continued to integrate information policy considerations into submissions made to parliamentary and other inquiries, and into the advice provided to Australian Government agencies in relation to freedom of information and privacy.

The OAIC continued to promote the Open PSI Principles on the OAIC website, at Information Contact Officer Network (ICON) and agency meetings, in reports, advices, consultations and submissions, and via social media.

The Open PSI Principles underpin the OAIC's work when examining PSI management practices across Government. The OAIC has encouraged agencies to embed the Principles in their internal policies and procedures on information management.

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Chapter Six

Privacy law reform and policy

Overview

The Office of the Australian Information Commissioner (OAIC) has a role in providing strategic policy advice on personal information handling issues to Australian and ACT Government agencies, the Norfolk Island Administration and private sector organisations. The advice covers the application of the *Privacy Act 1988* (Privacy Act), including the Information Privacy Principles (IPP), the National Privacy Principles (NPP), the credit reporting provisions in Part IIIA of the Privacy Act, the Credit Reporting Code of Conduct, and the Tax File Number Guidelines.

With the implementation of the *Personally Controlled Electronic Health Records Act 2012* (PCEHR Act), and the passing of the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Privacy Amendment Act), the scope of OAIC advice has expanded to cover new privacy obligations arising out of these legislative reforms.

In addition to responding to specific questions from Australian Government agencies, private sector bodies and international forums, the OAIC commenced work to produce an extensive range of legislative instruments and non-binding guidelines required to support the implementation of the reforms.

Privacy law reform

The Privacy Amendment Act was introduced into Parliament on 23 May 2012 and was passed with amendments on 29 November 2012. The Privacy Amendment Act is a part of the privacy law reform process that began in 2006. It introduces many significant changes to the Privacy Act, which apply to organisations, Australian and Norfolk Island Government agencies. The reform amendments commence on 12 March 2014. These changes are outlined below.

Australian Privacy Principles (APP)

Thirteen new privacy principles will regulate the handling of personal information by both Australian Government agencies and private sector organisations. The APPs replace the existing IPPs that currently apply to Australian Government agencies and the NPPs that currently apply to organisations. Some APPs differ from current principles, including APP 7 on the use and disclosure of personal information for direct marketing, and APP 8 on the cross-border disclosure of personal information.

Enhanced powers

The Australian Information Commissioner will have enhanced powers that include the ability to accept enforceable undertakings, seek civil penalties in the case of serious or repeated privacy breaches, and assess compliance by agencies and organisations compliance with the Privacy Act.

Changes to credit reporting laws

More comprehensive credit reporting will be introduced. Enhanced privacy protections will apply to credit information relating to notification, data quality, access and correction and complaints. Other changes include the introduction of: collection of repayment history information, a simplified and enhanced correction and complaints process, and civil penalties for breaches of certain credit reporting provisions.

The credit reporting reforms in the Privacy Amendment Act will be supplemented by a written code of practice. In December 2012, the Privacy Commissioner requested the Australasian Retail Credit Association (ARCA) to develop a credit reporting code and to apply for the code to be registered. The code registration application was received by the OAIC on 1 July 2013.

Codes

New laws will allow the Australian Information Commissioner to develop and register binding codes that are in the public interest. Codes will not replace the APPs but can provide greater specificity on how the APPs apply in an industry, sector or in relation to a particular technology.

Resources

The OAIC has produced numerous resources to assist agencies and organisations to understand and prepare for the changes. These include guides comparing the APPs to the IPPs and NPPs, and a business resource *Credit reporting — what has changed*. Throughout 2013 and 2014, the OAIC will develop legislative instruments required for the operation of the legislative scheme and will release other publications aimed at assisting APP entities to understand and apply the changes. For more information on publications see Chapter 4.

eHealth

The Australian Government announced in May 2010 that it would provide funding for a personally controlled electronic health record (eHealth) system. The system will enable the secure sharing of health information between a registered consumer's registered healthcare provider organisations. The consumer can control who can access their eHealth record.

The 2012–13 financial year was the first year of operation of the PCEHR Act. By the end of the financial year almost 400,000 people had registered for an eHealth record.

In recognition of the special sensitivity of health information, both the PCEHR Act and the related *Health Identifiers Act 2010* (HI Act), contain provisions protecting and restricting the collection, use and disclosure of personal health information. The Information Commissioner oversees compliance with those provisions and is the independent regulator of the privacy aspects of the eHealth system.

The OAIC's eHealth activities were carried out under a Memorandum of Understanding (MOU) with the Department of Health and Ageing (DoHA). The current MOU expires on 30 June 2014.

Major OAIC eHealth projects in 2012–13 included:

- commencement of an audit program to ensure that personal information records are maintained in accordance with the Privacy Act and the related PCEHR Act and HI Act
- publication of PCEHR enforcement guidelines that set out the Information Commissioner's approach to the exercise of enforcement and investigative powers under the PCEHR Act and Privacy Act
- publication of consumer fact sheets about privacy and eHealth
- development of an eHealth complaint handling and information sharing arrangement between the OAIC and state and territory privacy and health regulators
- establishment of internal processes and documentation to prepare for the OAIC's regulatory role under the PCEHR Act
- OAIC staff training on the eHealth privacy regulatory framework.

More information on this MOU can be found in Appendix 5.

Advice to Australian Government bodies

Policy advice to Australian Government bodies includes advice to parliamentary committees, substantive correspondence on specific proposals, privacy advice for inclusion in agency guidance material and advice for inclusion in other reports or published documents. A selection of the policy advices prepared in 2012–13 appears below.

Advice to the Senate Legal and Constitutional Affairs Committee on the Privacy Amendment (Privacy Alerts) Bill 2013

On 29 May 2013, the Privacy Amendment (Privacy Alerts) Bill 2013 (the Bill) was introduced to the House of Representatives. On 18 June 2013, the Senate referred the Bill to the Senate Legal and Constitutional Affairs Committee for inquiry and report. The Bill aims to establish a framework for the mandatory notification by regulated entities of serious data breaches to the Information Commissioner and to affected individuals.

The OAIC provided comments to the inquiry, strongly supporting the need for mandatory data breach legislation. The OAIC cited the apparent under-reporting of data breaches under the current voluntary regime, and noted the benefits of mandatory

data breach notification. The benefits include helping affected individuals to mitigate potential harm, helping rebuild public trust in the entities affected, and limiting the costs associated with a data breach.

The Senate Legal and Constitutional Affairs Committee recommended that the Senate pass the Bill.

Advice to the Department of Families, Housing, Community Services and Indigenous Affairs regarding privacy considerations for the National Disability Insurance Scheme Bill

The Department of Families, Housing, Community Services and Indigenous Affairs sought feedback from the OAIC on the draft *Rules for the protection and disclosure of information* (draft rules), made for the purposes of ss 58 and 67 of the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act).

The OAIC advice noted that the rules would play a critical role in regulating the exercise of disclosure powers in the NDIS Act, and suggested a number of ways that the draft rules could be amended to strengthen privacy protections. In particular, the rules should prescribe disclosures that are in the public interest rather than leaving that question open. They could also provide more detail regarding when personal information may be disclosed by the NDIS agency to state and territory bodies, to ensure reasonable limits on disclosure of information for purposes unconnected to the primary reason the information was collected.

The OAIC noted that a privacy-sensitive approach to the NDIS, that placed the individual at the centre of decisions about the handling of their personal information, would foster community trust. This would also greatly contribute to the stated objectives of the NDIS, that people with a disability are able to exercise choice and control in pursuing their goals and planning and receiving support.

Advice to the Department of Broadband, Communications and the Digital Economy on the telecommunications recommendations of the Australian Law Reform Commission

In September 2012, the Department of Broadband, Communications and the Digital Economy (DBCDE) sought the OAIC's views on the Australian Law Reform Commission's (ALRC) report, *For your information: Australian Privacy Law and Practice*. The report examined the extent to which the Privacy Act and related laws provide an effective framework for the protection of privacy in Australia, including a significant discussion on telecommunications.

The OAIC provided comments to DBCDE on 20 recommendations relating to the handling of personal information in the telecommunications sector. The OAIC supported the majority of the ALRC's recommendations.

Advice to the Australian Government Information Management Office on the Big Data Strategy

The OAIC has been represented on the Big Data Working Group, a multi-agency initiative of the Australian Government Information Management Office (AGIMO), since its inception in February 2013. Through the Big Data Working Group, the OAIC has provided comments and advice on the development of the Australian Government's Big Data Strategy. The Strategy was nearing completion at the end of the reporting year.

The OAIC urged that data be seen within the Strategy as a national asset, and that privacy be reframed as an enabler in terms of customer confidence. The OAIC has also been integral to ensuring the inclusion of the principles of Privacy by Design in the Strategy.

Advice to the Attorney-General's Department on the *Privacy Impact Assessment for the exchange of criminal history information between Australian and New Zealand*

In July 2012, Australia and New Zealand commenced a six-month trial to test more systematic processes for the exchange of criminal history information for employment vetting purposes. The trial was later extended for a further six months to July 2013. For the period of the trial, New Zealand was able to seek criminal records from all Australian states and territories, while Queensland was able to seek criminal records from New Zealand.

The OAIC provided advice to the Attorney-General's Department (AGD) on the draft Privacy Impact Assessment (PIA) developed for this project. The OAIC recommended that the draft PIA be amended to clearly outline which laws would apply to the information at each stage of the process, including which privacy regimes would protect the personal information that is held by the Queensland Government and New Zealand employers. The OAIC also recommended that AGD make the PIA available to the public, in the interests of transparency and openness. The PIA is now publicly available on AGD's website.

Advice to the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education on establishing the Unique Student Identifiers Scheme

In accordance with an MOU between the OAIC and the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (DIICCSRTE), the OAIC provided ongoing advice on establishing the Unique Student Identifier (USI) Scheme. The intention of the USI Scheme is to establish a framework to allow vocational education and training (VET) students to obtain a comprehensive and authoritative transcript of their VET achievements online.

The OAIC commented on the drafting instructions for the enabling legislation, and on a number of drafts of the Student Identifiers Bill 2013 (Student Identifiers Bill). The OAIC made submissions to DIICCSRTE's public consultations on the legislative package for the USI Scheme, and to the inquiry into the Student Identifiers Bill by the Senate Standing Committee on Education, Employment and Workplace Relations.

The Senate Standing Committee on Education, Employment and Workplace Relations recommended that the Senate pass the Student Identifiers Bill.

Advice to the Australian Security and Investments Commission on the disclosure of personal information on the Business Names Register

The Australian Security and Investments Commission (ASIC) manages the Business Names Register to record and publish the address of the principal place of a business, and an address for service of legal documents. If the address for service is a residential address, the full residential address is published on the register.

The OAIC contacted ASIC to outline the potential privacy risks that publishing residential addresses may pose to sole traders and individuals who operate small businesses. The OAIC recommended that consideration be given to providing additional mechanisms by which businesses do not have to provide a physical address as an address for service.

Advice to the Department of Health and Ageing in relation to a range of eHealth privacy matters

An MOU between the OAIC and DoHA was signed on 29 November 2012. The MOU provides that the OAIC will deliver an independent regulatory service in relation to privacy and management of personal and health information in relation to the eHealth record system and the Healthcare Identifier (HI) Service. Under the MOU, the OAIC has provided privacy policy advice to DoHA on a range of matters including Assisted Registration, use of pseudonyms and privacy notices and statements.

Further information regarding the activities performed by OAIC under the MOU can be found in Appendix 5.

Advice to the Department of Human Services

An MOU between the OAIC and the Department of Human Services (DHS) was signed on 4 February 2013. Under the MOU the OAIC provides dedicated privacy policy advice and assistance to DHS on Service Delivery Reform and general privacy issues.

The DHS Service Delivery Reform (SDR) program is intended to give Australians better access to social, health and welfare services. Some aspects of the program, such as the increased coordination and linking of services, will involve changes to the way that individuals' personal information is handled.

The Privacy Commissioner is a member of the inter-departmental committee set up to advise on SDR and consider the reforms from a whole-of-government perspective. The OAIC has provided advice on privacy impact assessments related to SDR, including the Tell Us Once and Single View of Customer service offerings. The OAIC also provided input into the privacy impact assessment drafted by DHS for the new Australia.gov.au authenticated portal, myGov.

More information about the MOU can be found at Appendix 5.

Advice to the Australian Customs and Border Protection Service

The OAIC provided advice in May 2013 to the Australian Customs and Border Protection Service (Customs) on a draft PIA of European Union sourced passenger name record data (PNR Project).

In the OAIC's view, an effective PIA:

- clearly describes the personal information flows in a project
- analyses the possible privacy impacts of these flows
- explains how these impacts will be addressed, including identifying possible alternative approaches
- demonstrates that an appropriate balance has been achieved in considering the interests of the relevant agency, the broader community and the individual.

The PNR Project involves the collection and use of a large amount of information about individuals entering Australia and, where necessary, will involve the disclosure and use of the information by many different agencies.

The OAIC's advice set out areas where the PIA could be improved, through further clarification or explanation of the privacy impacts of the PNR Project and further identification of the risks and consideration of strategies to mitigate those risks.

Submission to the Australian Prudential Regulation Authority on the *Draft Prudential Practice Guide — Managing Data Risk (PPG235)*

The Australian Prudential Regulation Authority (APRA) sought public comment on their *Draft Prudential Practice Guide (PPG235)*, which aims to assist financial institutions in managing data risk. The OAIC provided comments on the draft guide, strongly supporting the introduction of guidance for boards, senior management, risk management, business and technical specialists in the financial sector. The OAIC broadly outlined ways in which the draft guide may benefit from amendments to provide further information on privacy obligations.

Advice to the Australian Communications and Media Authority regarding best practice guidance to Carriage Service Providers on handling customer information

The Australian Communications and Media Authority sought advice on privacy issues from the OAIC in July 2012, for inclusion in their best practice guidance to Carriage Service Providers. The OAIC provided policy advice on the operation of the Privacy Act and privacy issues, including guidance on best practice when dealing with privacy breaches.

Advice to ACT agencies

The OAIC provides advice to ACT Government agencies on privacy issues under an MOU, including the following issues in 2012–13. More information about the MOU can be found in Appendix 5.

Advice to ACT Fire & Rescue regarding their intention to participate in a research study by Monash University on the health and mortality rate of fire fighters

ACT Fire & Rescue sought advice from the OAIC regarding their intention to participate in a research study by Monash University on the health and mortality rate of fire fighters. Specifically, advice was sought about the provisions in the Privacy Act which allow for personal information to be disclosed without consent for research purposes. ACT Fire & Rescue also sought advice on whether a Public Interest Determination (PID) was necessary for these purposes.

The OAIC advised that the disclosure of personal information by ACT Fire & Rescue to Monash University for the study would be an act done in the course of medical research. This would fall within s 95 of the Privacy Act. Consequently, if ACT Fire & Rescue was satisfied that the research had been approved by a Human Research Ethics Committee, the committee had applied the s 95 Guidelines, and had determined that the personal information can be disclosed without consent, a PID would not be required.

Advice to ACT Justice and Community Safety Directorate on their review of the *Workplace Privacy Act 2011*

In September 2012, the ACT Justice and Community Safety Directorate (JACS) called for comments on their review of the *Workplace Privacy Act 2011* (Workplace Privacy Act). The Workplace Privacy Act regulates the collection and use of surveillance information in the workplace and aims to provide a clear framework for the conduct of any surveillance, consistent with the right to privacy under the *Human Rights Act 2004* (ACT).

The OAIC made a submission to JACS noting key privacy matters absent from the Workplace Privacy Act that may be considered as part of the review. The OAIC noted that the Workplace Privacy Act does not contain a provision for ensuring that the privacy impact of proposed workplace surveillance is reasonable and necessary in the circumstances. In addition, the OAIC noted that it is unclear what mechanisms are available to individuals who wish to complain about matters regarding surveillance conducted under the Workplace Privacy Act.

Advice to private sector

The OAIC works collaboratively with business in promoting an understanding and acceptance of the NPPs, and the Australian Privacy Principles (APP), which will apply from March 2014. During 2012–13, the OAIC provided advice to a number of private sector entities, including on the following matters.

Advice to the mobile applications developers industry

Responding to the increasing number of Australians now using mobile devices, the OAIC initiated the development of a guide for developers of mobile applications (apps). The guide draws on work done in Canada and the United States of America, but is optimised for the Australian legislative and regulatory framework. The guide focuses on best practice and includes a two-page checklist for app developers that will also be published as a standalone document.

The OAIC conducted a round of both targeted and general consultations and received submissions from industry, government and the general public. Many of the recommendations from these submissions have been incorporated into the final version of the guide. The guide for developers of mobile applications is expected to be published later in 2013.

Market and Social Research Privacy Code

The *Market and Social Research Privacy Code* was made under Part IIIAA of the Privacy Act, and is administered by the Association of Market and Social Research Organisations (AMSRO). The Privacy Amendment Act introduced a new Part IIIB to govern privacy codes. After 12 March 2014, existing codes such as the *Market and Social Research Privacy Code* will no longer be registered codes under the Privacy Act.

AMSRO contacted the OAIC to indicate that they intend to register a new code in accordance with the Privacy Amendment Act. The OAIC provided advice to AMSRO on the process for developing and registering a code under the Privacy Amendment Act.

Advice to Google

The OAIC wrote to Google in February 2013 regarding the disclosure, to product sellers and providers, of personal information of individuals who purchase apps and other services through the Google Play service. The OAIC recommended that Google more clearly and consistently explain how it manages personal information across its suite of policy and disclosure documents, particularly in terms of Google Play and the Google Wallet mobile phone payment system.

In addition, and in conjunction with a number of Privacy and Data Protection Commissioners from other countries, the OAIC wrote to Google in June 2013, expressing concern about the development of the Google Glass wearable computing device. The Commissioners urged Google to better engage with data protection authorities about the product. Specifically, the Commissioners asked Google to address concerns about what information Google collects through Google Glass, what information it shares with third parties and what privacy safeguards Google and application developers are putting in place.

The OAIC also received regular briefings from Google regarding products in development and new products during the course of 2012–13.

Submissions and advice to Facebook

The OAIC continued to make submissions and provide verbal advice to Facebook about changes to its *Data Use Policy* and *Statement of Rights and Responsibilities*. This advice was provided with a view to helping Facebook achieve better privacy practice. The OAIC also received regular briefings from Facebook regarding products in development and new products during the course of 2012–13.

Advice to a Human Research Ethics Committee about the collection, use and disclosure of health information for research purposes

The OAIC provided advice to a member of a Human Research Ethics Committee regarding the provisions in the Privacy Act that allow for health information to be collected, used and disclosed for research purposes, and how these provisions apply to data linkage. Advice was provided about the application of the IPPs and the NPPs in relation to research involving data linkage using health information and other personal information, including de-identified information. The OAIC also provided advice on the progress of privacy law reform in this area.

Advice to Mental Health Law Centre (WA) Inc. on their draft *Plain English guide to accessing medical records*

The Mental Health Law Centre of Western Australia sought feedback from the OAIC on its draft *Plain English guide to accessing medical records*. The OAIC provided comments predominantly on access and privacy rights under the Privacy Act, including circumstances where the Privacy Act may apply in addition to (or in the absence of) the *Mental Health Act 1996* (WA). In addition to commenting on the guide, the OAIC explained reforms to the Privacy Act, in particular the implementation of the APPs.

Advice to Information and Privacy Commission NSW regarding individuals' access to records previously held by a health provider

The OAIC wrote to the Information and Privacy Commission New South Wales regarding an issue the Commission raised about the Australian Health Practitioner Regulation Agency. The issue related to individuals who are trying to seek access to records previously held by a provider that has sold or transferred their business, been disqualified or died. The OAIC advised that clarifying provider obligations in the event of practice closures, and changes to practitioner status, would improve certainty for providers and patients alike. The OAIC suggested that there may be an opportunity to deal with this issue if privacy health reforms are proposed by the Australian Government.

Advice to Communications Alliance on the Monitoring of Voice Communications

The OAIC provided comments in connection with the scheduled review of the *Participant Monitoring of Voice Communications Industry Guideline* (Guideline 516) and the *Monitoring of Voice Communications for Network Operation and Maintenance Industry Guideline* (Guideline 517). Both guidelines seek to provide guidance to carriers

and Carriage Service Providers (CSPs) on the practical application of interception and privacy legislation to the listening to, and recording of, voice communications.

The OAIC provided general comments on the guidelines to ensure compliance with the Privacy Act and to help minimise adverse privacy outcomes. The OAIC noted that the guidelines provide a useful and detailed approach to position carriers and CSPs to better understand their obligations under the NPPs. The OAIC advised that the guidelines will need to be reviewed with the introduction of the APPs.

Involvement in cross-government forums

Arrangement with state and territory health and privacy regulators regarding eHealth record system complaints and sharing information

The OAIC conducted an extensive consultation with state and territory health and privacy regulators throughout 2012–13 regarding the handling of eHealth complaints and sharing eHealth information. The consultation process included cross-jurisdictional teleconferences and individual meetings with regulators. The OAIC subsequently developed an *Information sharing and complaints referral arrangement* (the Arrangement) between the OAIC and state and territory health and privacy regulators.

The Arrangement establishes a protocol for referring and handling eHealth complaints where there is overlapping or concurrent jurisdiction, or where a complaint is made to the wrong regulator. As at 30 June 2013, the Queensland Office of the Information Commissioner, the ACT Health Services Commissioner, the Victorian Office of the Health Services Commissioner and the South Australian Health and Community Services Complaints Commissioner were parties to the Arrangement.

The National Identity Security Coordination Group

The OAIC is a member of the National Identity Security Coordination Group (NISCG), coordinated by the AGD. The NISCG consists of representatives from the Australian and state and territory government agencies with key roles in identity management. The NISCG was established to coordinate and implement the National Identity Security Strategy. The OAIC is also a member of the Commonwealth Reference Group on Identity Security (CRG), which was established to facilitate a whole-of-Government contribution to the National Identity Security Strategy. The OAIC provides privacy policy advice to these groups.

National Biometrics Interoperability Framework Steering Committee

As a result of the OAIC's interaction with the National Biometrics Interoperability Framework, in June 2013 the OAIC was invited to participate in the National Biometrics Interoperability Framework Steering Committee (the Steering Committee). The purpose of the Steering Committee is to guide the biometric centres of expertise managing and overseeing the National Biometric Interoperability Framework. The Steering Committee also seeks to promote biometric interoperability across the Australia Government. The OAIC provided policy advice on the privacy considerations to be taken into

account in the development of the National Biometrics Interoperability Framework, and other biometrics projects, as well as informing the Steering Committee on future development of biometric rules under the Privacy Amendment Act.

Australian Transaction Reports and Analysis Centre Privacy Consultative Committee

The OAIC is a member of the Australian Transaction Reports and Analysis Centre (AUSTRAC) Privacy Consultative Committee, an advisory committee to the AUSTRAC Chief Executive Officer (CEO). The Privacy Consultative Committee comprises revenue, law enforcement, privacy and civil liberties representatives to promote understanding of issues and develop positions concerning privacy, civil liberties and related matters. The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) requires the AUSTRAC CEO to have regard to privacy, and consult with the Information Commissioner in performing his functions under the AML/CTF Act. The Privacy Consultative Committee is one of the means by which the AUSTRAC CEO fulfils these obligations.

Advice to other jurisdictions

The OAIC provides advice to other jurisdictions as part of its activities, both internationally and domestically. During 2012–13, the OAIC participated in a number of international privacy and data protection forums. These forums enable international privacy protection authorities to build collaborative relationships. These are becoming more important in light of the increasing prevalence of transnational data protection issues.

In addition to engaging with privacy and data protection authorities in other jurisdictions, the OAIC provided policy advice to the Australian Government in relation to the protection of personal information, in the context of a number of international negotiations.

Global Privacy Enforcement Network Privacy Sweep

In May 2013, the OAIC participated in the first International Internet Privacy Sweep, along with 19 other privacy enforcement authorities — all members of the Global Privacy Enforcement Network (GPEN). The theme of the sweep was ‘Privacy Practice Transparency’. From 6–12 May 2013, sweep participants dedicated resources to analyse websites and mobile applications in a coordinated effort to assess privacy issues related to the theme. More information about the sweep can be found in Chapter 4.

Trans-Pacific Partnership Free Trade Agreement

The Trans-Pacific Partnership (TPP), also known as the Trans-Pacific Strategic Economic Partnership Agreement or TPP agreement, is a multilateral free trade agreement that aims to integrate the economies of the Asia-Pacific region. Membership of the TPP includes Brunei, Chile, New Zealand, Singapore, Vietnam, Malaysia, Peru, United States, and Australia.

The OAIC provided advice to the Australian Government representatives on the privacy considerations of the e-commerce chapter of the TPP. Most recently, the OAIC provided advice on the TPP's interaction with the Privacy Amendment Act in preparation for the latest round of negotiation discussions.

Advice to the Northern Territory Information Commissioner on handling personal information in emergency and disaster situations

In June 2013, the Northern Territory Information Commissioner contacted the OAIC seeking advice on balancing the protection of personal information and the disclosure and use of information in situations to assist victims in emergencies and disasters.

The OAIC advised the Northern Territory Information Commissioner of exemptions and safeguards in the Privacy Act that address emergency situations. Sections 80J and 80K allow Australian Government agencies, state and territory authorities, private sector organisations and non-government organisations to collect, use and disclose personal information during a declared emergency or disaster. The OAIC also highlighted that under the Privacy Amendment Act, agencies and organisation will be able to collect, use and disclose information if they reasonably believe that it is reasonably necessary to assist in locating a person who has been reported as missing, and the collection, use or disclosure complies with rules made by the Information Commissioner.

New legislative instruments

Under the Privacy Act, the Information Commissioner has the power to make certain legislative instruments. When making those legislative instruments, the Information Commissioner is required to comply with the requirements of the *Legislative Instruments Act 2003*.

PCEHR (Information Commissioner Enforcement Powers) Guidelines 2013

On 20 June 2013, the *PCEHR (Information Commissioner Enforcement Powers) Guidelines 2013* (PCEHR Guidelines) were registered on the Federal Register of Legislative Instruments. The PCEHR Guidelines were made under s111 of the PCEHR Act, which requires the Information Commissioner to formulate, and have regard to, guidelines relating to enforcement powers. These Guidelines set out the Information Commissioner's general approach to exercising his or her powers under the PCEHR Act and related powers under other Acts such as the Privacy Act. As the independent regulator of privacy aspects of the PCEHR system, the Information Commissioner has a range of enforcement powers including:

- using existing Privacy Act investigative and enforcement mechanisms, including conciliation of complaints and formal determinations
- seeking an injunction to restrain or require particular conduct
- accepting enforceable undertakings
- seeking a civil penalty order from a Court.

The PCEHR Guidelines explain the Information Commissioner’s general approach to the exercise of these enforcement powers and investigative powers under both the PCEHR Act and the Privacy Act, in relation to the eHealth system.

Public Interest Determinations

Part VI of the Privacy Act gives the Information Commissioner the power to make a determination that an act or practice of an Australian or ACT Government agency, or a private sector organisation, which may constitute a breach of an IPP, a NPP or an approved privacy code, shall be regarded as not breaching that principle or approved code for the purposes of the Privacy Act. This is known as a Public Interest Determination (PID).

No formal PID applications were received in the period of 2012–13.

Submission list

In 2012–13, the OAIC published 37 privacy submissions to inquiries being undertaken by parliamentary committees and government agencies. All submissions can be found on the OAIC’s website. Examples of submissions made during 2012–13 are listed below.

Privacy law reform

- *Inquiry into the Privacy Amendment (Enhancing Privacy Protection) Bill 2012* — submission to the Senate Standing Committee on Legal and Constitutional Affairs
- *Inquiry into Privacy Amendment (Privacy Alerts) Bill 2013* — submission to the Senate Standing Committee on Legal and Constitutional Affairs
- *Discussion Paper: Australian Privacy Breach Notification* — submission to the Attorney-General’s Department
- *Review of the Workplace Privacy Act 2011 (ACT)* — submission to the ACT Justice and Community Safety Directorate

Data

- *Draft Prudential Practice Guide PPG 235 on Managing Data Risk* — submission to the Australian Prudential Regulation Authority
- Comments on Cabinet submission: *A Plan to Improve Collection and Coordination of Firm-Level Data*
- *Notice and Consent in a World of Big Data: Microsoft Global Privacy Summit Summary Report and Outcomes* — submission to Microsoft

National security

- *Inquiry into Potential Reforms of National Security Legislation* — submission to the Joint Parliamentary Committee on Intelligence and Security

- *Council of Australian Governments’ review of Australian anti-terror legislation* — submission to Council of Australian Governments

Cyber issues

- *Consultation paper — Review of the effectiveness of an online database for small amount lenders* — submission to Australian Securities and Investments Commission

Council of Australian Governments reform agenda

- *Inquiry into the National Disability Insurance Scheme Bill 2012* — submission to Senate Standing Committee on Community Affairs

Migration

- *Inquiry into the Migration Amendment (Health Care for Asylum Seekers) Bill 2012* — submission to Senate Standing Committee on Social Policy and Legal Affairs

Telecommunications

- *International mobile roaming — proposed standard* — submission to the Australian Communications and Media Authority
- *Telecommunications (Interception and Access) (Requirements for Authorisations, Notifications and Revocations) Amendment Determination 2012* — submission to the Attorney-General’s Department
- *Proposed determination under section 183(2) of the Telecommunications (Interception and Access) Act 1979 (Cth)* — submission to Attorney-General’s Department
- *Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2013* (the draft 2013 Determination) — submission to the Australian Communications and Media Authority

Education

- *Consultation on the legislative package for the Unique Student Identifier* — submission to the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education
- *Inquiry into the Student Identifiers Bill 2013* — submission to the Senate Standing Committee on Education, Employment and Workplace Relations.

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Chapter Seven

Privacy compliance

Overview

To ensure that privacy is valued and respected in Australia, the Office of the Australian Information Commissioner (OAIC) undertakes a wide range of compliance activities. These include running a telephone and written enquiry service, investigating and resolving individual complaints, conducting audits and data-matching inspections, conducting own motion investigations (OMIs) and receiving and reviewing data breach notifications (DBNs).

In 2012–13, the OAIC received 1496 complaints, an increase of 10.2% over the 1357 received in 2011–12. Additionally, the OAIC received 61 voluntary DBNs, a 33% increase on the number of DBNs received in 2011–12.

Thirteen OMIs were commenced and work was undertaken on seven audits.

Responding to privacy enquiries

The OAIC's enquiries line (1300 363 992) provides information about privacy issues and privacy law for the cost of a local call. The OAIC's enquiries line also responds to written enquiries received by post, email or fax.

Telephone enquiries

In 2012–13, the enquiries line answered 18,205 telephone calls, 9,009 of which related to privacy matters that were within the OAIC's jurisdiction. A further 1,703 enquiries were received about privacy matters that were out of jurisdiction.

Most callers are individuals seeking information about their privacy rights and how to resolve privacy complaints.

Table 7.1 sets out the top 10 types of caller who telephoned the enquiries line in 2012–13.

Table 7.1 Top 10 privacy caller types

Top 10 privacy caller types	Number of calls
Individuals	7434
Business and professional associations	510
Health service providers	195
Real estate agents	134
Australian Government	128
Legal, accounting and management services	93
Personal services (including employment, child care, vets)	59
Charities	50
Finance (including superannuation)	49
Education	44

Table 7.2 provides a breakdown of issues discussed in the calls received during 2012–13. More than three quarters (83%) of the privacy-related calls were about the National Privacy Principles (NPPs). The most frequently discussed issue continues to be the use and disclosure of personal information by private sector organisations, followed by NPP exemptions, improper collection, access and correction and data security.

The number of privacy-related calls about credit reporting and the Information Privacy Principles (IPPs) were lower than in previous years.

Table 7.2 Breakdown of issues discussed in privacy calls received

Issues	Number of calls
NPP 1 — Collection	1693
NPP 2 — Use and disclosure	2361
NPP 3 — Data quality	189
NPP 4 — Data security	1159
NPP 5 — Openness (privacy statement)	117
NPP 6 — Access and correction	1381
NPP 7 — Identifiers	6
NPP 8 — Anonymity	20
NPP 9 — Transborder data flows	41
NPP 10 — Sensitive information collection	44
NPP Exemptions	1733
NPPs generally	114
Credit reporting	924
Data breach notification	25
Data-matching	11
Healthcare identifier	0
Information Privacy Principles (public sector)	632
Personal Property Securities Register	0
Personally controlled electronic health records	10
Privacy codes	5
Privacy law reforms	82
Spent convictions	120
Tax file numbers	42

Table 7.3 lists the 10 private sector industry groups that were most enquired about in NPP telephone enquiries. This pattern has been generally consistent for several years.

Table 7.3 Top 10 private sector industry groups enquired about

Private sector industry group	Number of telephone enquiries
Business and professional associations	2896
Health service providers	1169
Real estate agents	768
Finance (including superannuation)	559
Telecommunications	466
Insurance	264
Retail	222
Personal services (including employment, child care, vets)	217
Online services	173
Education	158

Following are some examples of calls received during 2012–13.

- A caller asked about the privacy implications of an organisation monitoring and recording calls for quality and coaching purposes. The caller was advised that ‘monitoring’ and ‘recording’ are not the same, and that the *Privacy Act 1988* (Privacy Act) applies only to personal information that is or will be held in a record. The organisation should understand that personal information, once recorded, must be managed in accordance with the NPPs, even if recorded only for staff development and training. Information was provided to the caller about NPP 1 (Collection), NPP 2 (Use and disclosure) and NPP 6 (Access and correction). Best practice privacy compliance was also discussed, noting that best practice would be to provide individuals with the option not to have their call recorded.
- A caller was concerned about the actions of his ex-partner, who had obtained his details and was opening fraudulent lines of credit. The police had been contacted. The caller was advised that the Privacy Act may not apply as it does not cover the actions of individuals. The caller was nevertheless provided with information on NPP 2 (Use and disclosure), NPP 4 (data security), the OAIC’s complaints process, and OAIC fact sheets on protecting your own personal information.
- A caller asked if the Commonwealth Spent Convictions Scheme applied to a criminal history check for employment that includes working with children. He was provided with information about the Spent Convictions Scheme and relevant exemptions.

Written enquiries

Of the 3142 written enquiries received by the OAIC in 2012–13, 1567 related to privacy matters that were within the OAIC’s jurisdiction. A further 323 enquiries were about privacy matters out of jurisdiction. The OAIC is committed to responding to 90% of written enquiries within 10 working days. This benchmark was met in 2012–13, with 93% of privacy-related written enquiries responded to within 10 working days.

In 2012–13, 64% of privacy related written enquiries concerned the private sector provisions of the Privacy Act. This is consistent with the 2011–12 figure (65%).

Complaints

The OAIC can investigate complaints about acts or practices that may be an interference with an individual’s privacy. These can include allegations that:

- personal information has been collected, held, used or disclosed by an organisation in contravention of the NPPs
- personal information has been handled by an Australian, ACT or Norfolk Island Government agency in a manner that does not comply with the IPPs
- credit-worthiness information held by credit providers and credit reporting agencies has been mishandled
- Tax File Numbers (TFNs) have been mishandled by individuals or organisations
- personal information has not been managed in accordance with spent conviction, data matching or healthcare identifier legislation.

Complaints received during 2012–13

In 2012–13, the OAIC received a total of 1496 complaints relating to privacy, on a wide variety of issues.

Non-compliance with the NPPs continues to be most commonly complained about, being raised in 75% of all complaints received in this financial year. This is a significant increase from the previous financial year, where just over half of the complaints received related to the NPPs. In contrast, just over 17% of complaints in 2012–13 were about the IPPs. There was also an increase in complaints about credit reporting and in complaints where the OAIC found that it had no jurisdiction.

The particular issues complained about as a percentage of total complaints received in 2012–13 are described in Table 7.4. The percentages exceed 100% because a complaint can raise more than one issue.

Table 7.4 Key issues in complaints

Issues	Number of complaints	% of complaints
Credit reporting	403	26.9
NPP 2 — Use and disclosure	378	25.3
NPP 6 — Access and correction	216	14.4
NPP 1 — Collection	187	12.5
NPP 4 — Data security	183	12.2
Not in jurisdiction	145	9.7
NPP 3 — Data quality	137	9.2
IPP 10 and 11 — Use and disclosure	127	8.5
Other jurisdictional issues	80	5.4
IPP 1 — collection	38	2.5
IPP 4 — Security	38	2.5
TFNs	16	1.1
IPP 8 — Accuracy	16	1.1
IPP 6 and 7 — Access and correction	15	1.0
IPP 3 — Nature of collection	13	0.9
NPP 5 — Openness	11	0.7
IPP 9 — Use for relevant purpose	10	0.7
IPP 2 — Notice	7	0.5
NPP 10 — Collection of sensitive information	5	0.3
Spent convictions	5	0.3
NPP 9 — Transborder issues	3	0.2
NPP 7 — Agency identifier	1	0.1
NPP 8 — Anonymity	1	0.1

As in 2011–12, the most common issue in both NPP and IPP complaints was use and disclosure. Complaints received about credit reporting increased by 4.3% from the previous financial year.

Table 7.5 shows the number of complaints made about each of the 10 most commonly complained about industry sectors. As in 2011–12, the finance sector continues to be the most frequently complained about industry. Following a decrease last year, complaints about the Australian Government rose from the third to the second most commonly complained about sector. Complaints about telecommunications, retail and utilities organisations also increased, and complaints about business and professional associations entered the 10 most complained about sectors this financial year.

Table 7.5 Ten most commonly complained about sectors

Sector	Number of complaints
Finance (including superannuation)	305
Australian Government	181
Telecommunications	127
Credit reporting agencies	117
Health service providers	100
Retail	75
Online services	65
Insurance	55
Utilities	49
Business and professional associations	45

Most complained about organisations and agencies

The most complained about organisations and agencies are listed in Table 7.6.

Many of these organisations and agencies carry out high numbers of transactions involving personal information, and the number of complaints may represent only a small percentage of those transactions.

The fact that an organisation or agency has been the subject of a complaint does not necessarily mean that the organisation or agency has been found to be in breach of the Privacy Act.

Table 7.6 Most complained about organisations and agencies

Organisation	Number of complaints received
Veda Advantage Information Services and Solutions Ltd	98
Telstra Corporation Limited	53
Department of Human Services	39
Commonwealth Bank of Australia Limited	31
Westpac Banking Corporation	26
National Australia Bank Limited	23
Singtel Optus Pty Ltd	23
ANZ Bank Limited	21
Dun & Bradstreet (Australia) Pty Ltd	18
Synergy Energy	16

Complaints closed during 2012–13

In 2012–13, the OAIC closed 1504 complaints, an increase of approximately 8.7% on the complaints closed in 2011–12.

One of the OAIC’s deliverables (see Chapter 2) is to finalise 80% of all privacy complaints within 12 months of receipt. In 2012–13, 95.7% of complaints were finalised within 12 months. In 2012–13, complaints were closed in an average of 3.7 months, which is an improvement from the previous financial year (average of 4.4 months).

The OAIC can investigate acts or practices that may be a breach of privacy. Where appropriate, an attempt will be made to resolve a complaint through conciliation.

If the OAIC is satisfied that a matter has been adequately dealt with, or if there has not been an interference with privacy, the OAIC may decide not to investigate the matter or to cease an investigation. Otherwise, a Commissioner may make a determination about a complaint under s 52 of the Privacy Act.

The OAIC investigated or carried out preliminary inquiries on a slightly lower percentage of the total number of complaints received than it did in 2011–12. That is, there was a slight increase in the number and percentage of complaints that were declined at the outset.

Table 7.7 provides more information about the stage at which complaints were closed.

Table 7.7 Stage at which complaints were closed

Stage closed	Number of complaints	%
Without investigation	827	55
Preliminary inquiries	535	35.6
Investigation	142	9.4
Total	1504	100

Complaints closed without investigation

In 2012–13, the OAIC closed 55% of complaints without investigation.

The most common reasons for not investigating those complaints were:

- no interference with privacy (s 41(1)(a))
- complaint had not been raised with the respondent before being brought to the OAIC (s 40(1A))
- complaint was not within jurisdiction, the individual lodging the complaint was not complaining about the handling of their own personal information, or a respondent was not specified (s 36)
- complainant had not given the respondent sufficient time to deal with the complaint (s 41(2)(b)).

Table 7.8 shows, in more detail, the reasons why complaints were closed without investigation. Complaints can cover more than one issue so the total number of issues by jurisdiction exceeds the number of complaints closed.

Table 7.8 Reasons for closing a complaint by jurisdiction

Reasons for closing complaint	NPPs	IPPs	Credit reporting	TFN	Spent convictions	None	Total
Not the privacy of the complainant or no respondent specified, no jurisdiction — s 36	37	11	0	1	1	117	167
No interference with privacy — s 41(1)(a)	127	25	69	1	0	45	267
Complaint not raised with respondent — s 40(1A)	108	24	80	0	0	0	212
Aware of alleged breach for more than 12 months — s 41(1)(c)	22	12	7	2	0	0	43
Frivolous, vexatious, misconceived, lacks substance — s 41(1)(d)	14	5	3	0	0	0	22
Dealt with under another law — s 41(1)(e)	4	0	4	0	0	0	8
Another law is more appropriate — s 41(1)(f)	5	1	1	0	0	0	7
Respondent has adequately dealt with the matter — s 41(2)(a)	18	2	4	1	0	0	25
Respondent has not had opportunity to deal with complaint — s 41(2)(b)	65	11	28	0	0	0	104
Other (for example, withdrawn)	6	0	5	0	0	2	13
Total	406	91	201	5	1	164	868

Of note is that 316 complaints (nearly one-third) were closed as the complainant had not raised the matter first with the respondent (s 40(1A)) or the respondent had not had an opportunity to deal with the complaint (s 41(2)(b)).

Complaints closed following preliminary inquiries

The Privacy Act authorises the OAIC to conduct preliminary inquiries to determine whether to investigate a complaint or exercise a discretionary power to not investigate a matter. For instance, a preliminary inquiry may seek to determine:

- whether an agency or organisation is willing to provide access to records
- if a particular act or practice is authorised by law
- whether an organisation falls within the small business operator exemption
- whether a respondent is an agency or organisation that is subject to the Privacy Act.

In 2012–13, the OAIC closed 35.6% of complaints after making preliminary inquiries.

Table 7.9 provides more detail on the basis for closing complaints following preliminary inquiries. The total number of issues by jurisdiction exceeds the number of preliminary inquiries closed because a complaint may raise more than one issue.

Table 7.9 Reasons for closing complaints after making preliminary inquiries by jurisdiction

Reasons			Credit		Spent	Health-		Total
	NPPs	IPPs	reporting	TFN	Convictions	care	None	
s 36	2	1	1	0	0	0	2	6
s 41(1)(a)	192	34	36	0	2	1	47	312
s 40(1A)	3	0	2	0	0	0	0	5
s 41(1)(d)	3	1	3	0	1	0	0	8
s 41(1)(f)	2	0	0	0	0	0	0	2
s 41(2)(a)	134	9	21	1	0	0	0	165
s 41(2)(b)	1	2	12	0	0	0	0	15
Other	40	5	28	0	0	0	5	78
Total	377	52	103	1	3	1	54	591

Key:

s 36 — not the privacy of the complainant or no respondent specified

s 41(1)(a) — no interference with privacy

s 40(1A) — complaint not raised with respondent

s 41(1)(d) — frivolous, vexatious, misconceived, lacks substance

s 41(1)(f) — another law is more appropriate

s 41(2)(a) — respondent has adequately dealt with the matter

s 41(2)(b) — respondent has not had an opportunity to deal with the complaint

Other — for example, withdrawn

The most common reason for closing a complaint after conducting a preliminary inquiry continued to be a finding that the individual's privacy had not been interfered with, for example the use or disclosure was permitted under the relevant NPP or IPP.

Nature of remedies achieved following preliminary inquiries

In conducting a preliminary inquiry, the OAIC may find that the respondent has adequately dealt with the matter, or the OAIC may be able to resolve the complaint through conciliation. Table 7.10 provides further detail about the types of remedies achieved following preliminary inquiries. The total number of remedies listed in Table 7.10 exceeds the total number of complaints where preliminary inquiries were conducted, as more than one remedy may have resulted for a particular complaint.

Table 7.10 Remedies for complaints closed as adequately dealt with after preliminary inquiries by jurisdiction

Remedy	NPPs	IPPs	Credit reporting	TFN	Total
Access provided	57	0	0	0	57
Apology	28	6	1	1	36
Changed procedures	21	1	0	1	23
Compensation up to \$1000	7	0	3	0	10
Compensation \$1001 to \$5000	4	0	1	0	5
Compensation \$5001 to \$10,000	0	0	1	0	1
Compensation over \$10,000	1	0	0	0	1
Counselled staff	7	1	0	0	8
Other remedy	28	3	3	1	35
Record amended	23	4	170	0	44
Staff training	12	2	0	0	14
Total	188	17	26	3	234

As can be seen from Table 7.10, the most common remedy that resulted after a preliminary inquiry was a complainant receiving access to their records, followed by an amendment of records. Compensation was received by complainants in just over 7% of issues resolved at the preliminary inquiries stage.

Complaints closed after an investigation

In 2012–13, the OAIC closed 9.4% of complaints after an investigation was opened under s 40(1) of the Privacy Act.

Table 7.11 shows the reasons for closing a complaint after an investigation was commenced. The number of issues by jurisdiction exceeds the number of investigations closed, because a complaint may raise more than one issue.

Table 7.11 Reasons for closing a complaint following investigation by jurisdiction

Reasons for closing following investigation	NPPs	IPPs	Credit reporting	TFN	Total
No interference with privacy — s 41(1)(a)	25	14	14	0	53
Respondent has adequately dealt with the complaint — s 41(2)(a)	57	12	12	2	83
Determination made by the Privacy Commissioner — s 52	0	0	1	0	1
Other (for example withdrawn or being dealt with under another law)	9	3	4	0	16
Total	91	29	31	2	153

The OAIC tries, where possible, to resolve cases through conciliation at an early stage of an investigation. Respondents took steps to resolve the complaint in just over 50% of cases.

The remedies that were achieved by conciliation after an investigation include:

- apologising to the complainant
- training and counselling staff
- amending database systems and records
- changing internal procedures
- providing the complainant with access to records
- paying compensation to the complainant.

Nature of remedies achieved after an investigation

Table 7.12 provides more detail on the outcome of complaints that were closed on the basis that they had been adequately dealt with by the respondent, after an investigation was commenced by the OAIC. More than one remedy may have been reached for a particular complaint. Therefore, the total listed in Table 7.12 is not equal to the total number of complaints.

Table 7.12 Remedies for complaints that were closed as adequately dealt with by respondent after an investigation was commenced by jurisdiction

Remedy	NPPs	IPPs	Credit reporting	TFN	Total
Access provided	9	0	1	0	10
Apology	28	9	3	1	41
Changed procedures	17	5	1	1	24
Compensation up to \$1000	9	1	2	2	14
Compensation \$1001 to \$5000	2	2	2	0	6
Compensation \$5001 to \$10,000	4	2	1	0	7
Compensation over \$10,000	1	0	0	0	1
Counselled staff	9	0	0	0	9
Other remedy	15	1	4	0	20
Records amended	6	1	8	0	15
Staff training	10	2	2	1	15
Total	110	23	24	5	162

An apology to the complainant is the most common remedy achieved through conciliation, followed by compensation. The number of matters in which compensation formed part of the remedy (28) was the same as in 2011–12. There was a doubling in the number of matters in which a change of procedures formed part of the remedy (24) compared to the previous year.

Complaints under approved codes

The Privacy Act allows for organisations or groups of organisations to develop privacy codes. A code approved by the Information Commissioner replaces the NPPs as the legally enforceable privacy standards for those organisations. The Information Commissioner is the code adjudicator.

At 30 June 2013, there were two approved privacy codes in force:

- Queensland Club Industry Privacy Code — effective from 23 August 2002
- Market and Social Research Privacy Code — effective September 2003.

The OAIC did not receive complaints under either of the approved codes in 2012–13.

Determinations

The Privacy Commissioner made one determination in 2012–13: *'S' and Veda Advantage Information Services and Solutions Limited*

A determination is a legal decision or finding made by a Commissioner, where conciliation has not resolved the matter. In this matter, the Privacy Commissioner declared that: the respondent apologise in writing to the complainant, amend the complainant's credit file and not provide the complainant's credit report to any other person or body until it has amended/removed the misleading content from the credit report. The respondent was also required to pay the complainant \$2000. Further, the Privacy Commissioner recommended that the respondent revise training packages and user information guides for subscribers and engage an independent auditor to review the respondent's compliance with the Privacy Act.

Own motion investigations

Section 40(2) of the Privacy Act enables the Information Commissioner to investigate a possible interference with privacy without first receiving a complaint from an individual, if the Information Commissioner considers an investigation to be desirable. These investigations are called own motion investigations (OMI). From March 2014 under the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* these investigations will be known as 'Commissioner Initiated Investigations.'

When conducting an OMI the OAIC can gather information about a respondent's privacy practices, and can work with that agency or organisation to resolve issues of non-compliance and improve their overall privacy practices.

During 2012–13, 13 new matters involving alleged interferences with privacy were assessed for investigation as OMIs. These matters came to the OAIC's attention from a variety of sources, including emails and letters from individuals and systemic issues identified through complaints or as a result of media coverage.

The OAIC uses its own risk assessment criteria to determine whether to investigate a matter on its own motion. The criteria include:

- the number of people affected and the possible consequences for those individuals
- the sensitivity of the personal information involved
- the progress of an agency's or organisation's own investigation into the matter and consideration of the actions taken by the entity in response
- the likelihood that the investigation will reveal acts or practices that involve systemic interferences with privacy and/or that are unidentified.

Table 7.13 shows a breakdown of the most common issues that arose in OMIs in 2012–13. The main compliance issues related to data protection, especially in relation to the adequacy of database security arrangements to prevent targeted hacking attacks that can lead to online disclosure of personal information.

Examples of incidents investigated in 2012–13 include:

- unlawful hacking attacks of customer databases that resulted in the online publication of customer data; this customer data included email addresses, passwords, quote and ordering information and in some instances credit card details
- hardcopy records of customers of an accommodation provider being stolen following a break-in at a secured storage facility; compromised data included identification documents and credit card details
- manipulation of an organisation’s website URL to reveal the details of different customers, such as name and address information.

Table 7.13 Issues in own motion investigations opened in 2012–13

Issues	Number of investigations
Credit reporting agency — access to credit file (s 18H)	1
NPP 1.1 — unnecessary collection	1
NPP 1.2 — unlawful, unfair collection	1
NPP 1.3 and 1.5 — insufficient notice	1
NPP 1.4 — third party collection	1
NPP 2 — improper use or disclosure	2
NPP 3 — data quality issues	1
NPP 4.1 — data protection issues	10
NPP 4.2 — data retention issues	3
NPP 9 — transborder data flow issues	1
NPP 10 — sensitive information collection	1
Total	23

A number of issues that came to the attention of the OAIC in 2012–13 were matters of significant public concern. To promote community confidence and transparency of its regulatory activities, the OAIC published two OMI reports that are available on the OAIC’s website.

Data breach notifications

A data breach notification (DBN) occurs when an organisation or agency informs the OAIC that personal information in its possession or control has been subject to loss or unauthorised access, use, disclosure, modification or other misuse.

In 2012–13, the OAIC received 61 DBNs, a 33% increase from the number of DBNs received in 2011–12. While there is no specific obligation in the Privacy Act for agencies or organisations to report data breaches to the OAIC, many agencies and organisations

do so as good privacy practice. The OAIC encourages agencies and organisations to apply the advice set out in the OAIC guide, *Data breach notification: A guide to handling personal information security breaches*.

The Data breach notification guide includes information about when to report a data breach to the OAIC or affected individuals. It outlines four steps to consider when responding to a breach or suspected breach and also outlines preventative measures that should be taken as part of a comprehensive information security plan.

Reporting a DBN to the OAIC and taking follow-up action can help agencies and organisations ensure they meet their obligations under the Privacy Act, and particularly IPP 4, NPP 4 and Part IIIA of the Privacy Act. The OAIC's investigation of a DBN incident primarily focuses on the data security measures an agency or organisation had in place when the incident occurred and the steps taken to improve security practices as a result of a DBN. When considering the data security measures in place the OAIC has regard to its *Guide to information security*, released in April 2013.

The OAIC assesses each DBN to determine if further action is required by the agency or organisation to appropriately respond to the breach. The OAIC may take no further action if the agency or organisation has contained the breach by recovering the information or has taken steps that mitigate a further impact on individuals affected by the breach. These steps may include notifying relevant authorities and individuals, or reviewing and improving data security practices. Where the OAIC considers that inadequate steps have been taken or the agency or organisation is still assessing the source and impact of the breach and the overall response that is required, the OAIC will work with the entity to assist it to apply best privacy practice. In cases where the OAIC is not satisfied with the voluntary action taken by the agency or organisation to resolve the matter, it may open an OMI.

Issues in data breach notifications

Incidents reported to the OAIC through DBNs in 2012–13 included:

- an email containing exit interview survey data from ex-staff was sent to third parties; the personal information included names, physical and email addresses, dates of birth and reasons for separation
- the theft of secured personal information due to criminal activities, such as break and enter offences
- disclosure of customer or client personal information (including in some cases health information) to unauthorised third parties
- the inadvertent collection of personal and health information while collecting technical data relating to the functioning of specialist equipment
- the hacking of databases containing customers' personal information.

Typically, the actions taken by entities in response to a DBN included system reviews and modification, written notifications to affected individuals, apologies, retrieval of records, changes in standard operating procedures and staff training.

Data-matching

Monitoring government data-matching

Data-matching is the process of bringing together large data sets of personal information from different sources and comparing the data sets to identify any discrepancies. For example, the Australian Taxation Office (ATO) may undertake a data-match to identify retailers that may be operating outside the tax system or who may be under-reporting turnover. This process may include identifying individuals.

Data-matching involves analysing information about large numbers of people, the majority of whom are not under suspicion. This means that data-matching raises privacy issues. To ensure that government agencies have proper regard to privacy principles when undertaking data-matching, the OAIC performs a number of functions.

The Information Commissioner has statutory responsibilities under the *Data-matching Program (Assistance and Tax) Act 1990* (Data-matching Act) and the *Guidelines for the Conduct of the Data-matching Program* (statutory data-matching guidelines). Additionally, the Information Commissioner oversees the functioning of the *Guidelines for the use of data-matching in Commonwealth administration*, which are voluntary guidelines to assist agencies not subject to the Data-matching Act to perform data-matching programs in a privacy sensitive way.

Matching under the Data-matching Act and statutory data-matching guidelines

To detect overpayments, taxation non-compliance and the receipt of duplicate payments, the Data-matching Act provides for the use of tax file numbers in data-matching processes undertaken by a special Centrelink Program unit within the Department of Human Services (DHS). This unit runs matches on behalf of DHS, the Department of Veterans' Affairs (DVA) and the ATO.

The Data-matching Act and the statutory data-matching guidelines outline the types of personal information that can be used, and how it can be processed. The Data-matching Act and guidelines also provide individuals with the opportunity to dispute or explain any matches, and require that individuals have a means of redress.

The Data-matching Act requires DHS, DVA and the ATO to report to Parliament on the results of any data-matching activities carried out under that Act. These reports are published separately by each agency.

The Data-matching Act also provides that the Information Commissioner is responsible for monitoring the functioning of the statutory data-matching program. The OAIC discharges this function by running data-matching inspections.

Inspections

In previous financial years, the OAIC undertook data-matching inspections at specified regional Business Integrity Sites (BIS), which processed and completed the data-matching reviews. During this financial year, Centrelink implemented a nationwide, risk based

intervention strategy for the processing of data-match reviews, known as Component Based Processing (CBP). Under CBP, individual components of a single data-match review may be completed across a number of BIS around Australia.

As a CBP inspection reviews data-match records completed across multiple sites, future data-match inspections can now be undertaken independently from a specific BIS location.

During the transition to CBP during 2012–13, the OAIC inspected DHS's handling of a sample of data-matching cases for two BIS, and undertook a third inspection of records processed using the CBP approach.

The inspections were:

- Business Integrity Network Queanbeyan (Griffith region), September 2012
- Business Integrity Network Newcastle (Wallsend region), January 2013
- Business Integrity Network Australia (CBP), May 2013.

Representatives of the OAIC, with the assistance of Centrelink and regional staff, conducted inspections and reviewed a sample of customer records which had been through the data-matching process.

The Newcastle (Wallsend) inspection was undertaken at the Business Integrity Services Centre (BISC) in Queanbeyan, NSW, and included a sample of 10 records processed under the CBP approach. A full inspection of 100 records processed under the new CBP approach was undertaken at Centrelink premises in Redfern, NSW.

At the completion of each inspection, the OAIC prepared and forwarded a report to the National Manager of the Business Integrity Division, Centrelink, outlining the findings.

While the OAIC found that Centrelink's processes and procedures for statutory data-matching were generally compliant with the requirements of the Data-matching Act and the Privacy Act, the OAIC identified some areas of risk and made recommendations to improve practices.

Matching under the Guidelines for the use of data-matching in Commonwealth administration

Many Australian Government agencies also carry out data-matching activities that are not subject to the Data-matching Act, but are run under different laws authorising the use and disclosure of personal information for data-matching purposes. To assist agencies performing such data-matching activities to have proper regard to the privacy of individuals, the Information Commissioner has issued voluntary data-matching guidelines called the *Guidelines for the use of data-matching in Commonwealth administration*.

These voluntary guidelines require that programs are regularly monitored and evaluated, that individuals identified have the opportunity to dispute the results, and that action against individuals is not taken solely on the basis of automated processes.

Agencies are also required to prepare a description of the data-matching activity (a 'program protocol'). Before the activity is commenced, the program protocol should be submitted to the Information Commissioner for comment, and once it has been finalised, the program protocol should be made available to the public.

In 2012–13, the Information Commissioner received 13 program protocols for proposed non-statutory data-matching activities. A summary of these protocols is outlined below.

Matching agency: Australian Taxation Office

Contractor Payments Data-Matching Program (August 2012)

The purpose of the protocol is to match tax return data from contractors with taxation records from businesses that make payments to contractors.

Source agency: Australian Taxation Office (Employer (Payer) Obligation Audit data).

Motor Vehicle Data-Matching Program (September 2012)

The purpose of the protocol is to match motor vehicle registration data against taxpayer records to identify individuals who are not meeting their tax obligations.

Source agencies:

- Roads and Maritime Services, NSW
- Department of Transport and Main Roads, QLD
- Vic Roads
- Department of Infrastructure, Energy and Resources, TAS
- Department Transport, Energy and Infrastructure, TAS
- Department of Transport, WA
- Department of Lands & Planning, NT
- Directorate of Territory and Municipal Services, ACT

Debit and Credit Card Data-Matching Program (October 2012)

The purpose of the protocol is to match merchant debit and credit card data against taxpayer records to identify businesses not meeting their registration, reporting, lodgement and payment obligations.

Source agencies:

- Commonwealth Bank of Australia
- St George Bank
- Westpac
- ANZ Bank
- National Australia Bank
- Bendigo and Adelaide Bank

- Bank of Queensland
- BWA Merchant Services
- American Express Australia
- Diners Club Australia.

Tax-free Government Pensions or Benefits Data-Matching Program (October 2012)

The purpose of the protocol is to match tax-free government pensions or benefits data against taxpayer records to identify non-compliance by taxpayers claiming dependant tax offsets.

Source agencies: Department of Human Services and the Department of Veterans Affairs.

Banking Transparency Strategy Data-Matching Program (October 2012)

The purpose of the protocol is to match offshore bank account details against taxpayer records to identify Australian residents utilising offshore bank accounts to conceal income and assets subject to tax in Australia.

Source agencies:

- ANZ Bank
- Commonwealth Bank of Australia
- National Australia Bank
- Westpac
- Bank of Queensland Limited
- Macquarie Bank Limited
- Arab Bank of Australia Limited
- Bank of China (Australia) Limited
- Citigroup Pty Limited
- HSBC Holdings PLC
- Investec Bank (Australia) Limited
- Rabobank Australia Limited
- China Construction Bank Corporation
- Citibank, N.A.
- Credit Suisse AG
- Deutsche Bank Aktiengesellschaft
- Rabobank Nederland
- Union Bank of Switzerland.

Real Property Data-Matching Program (October 2012)

The purpose of the protocol is to match revenue, land titles and residential tenancies' rental bonds data against tax records to identify non-compliance with taxation obligations such as capital gains.

Source agencies:

- Office of State Revenue, NSW
- Department of Finance and Services — Land and Property Information, NSW
- Office of Fair Trading — Rental Bond Board, NSW
- Victorian State Revenue Office
- Consumer Affairs Victoria — Residential Tenancies Bond Authority
- Directorate of Territory Environment and Sustainable Development, ACT
- Office of Regulatory Services (Land Titles Office), ACT
- Revenue Office, NT
- Department of Lands, Planning and the Environment, NT
- Office of State Revenue, QLD
- Residential Tenancies Authority, QLD
- Department of Primary Industries, Parks, Water and Environment, TAS
- State Revenue Office, TAS
- Department of Justice, TAS
- Revenue SA
- Department of Planning, Transport and Infrastructure — Land Services Group, SA
- Land Information Authority, WA
- Office of State Revenue, WA.

Local Government Contractor Payments Data-Matching Program (November 2012)

The purpose of the protocol is to match contractor payments made by local government entities (councils and shires) in Queensland, NSW, Victoria and Tasmania against taxpayer records to identify non-compliance with taxation obligations including taxable government grants.

Source agencies: local government council and shire authorities throughout Queensland, Tasmania, NSW, Victoria.

WorkCover Data-Matching Program (December 2012)

The purpose of the program is to match employer data from WorkCover authorities against taxpayer records to identify non-compliance with taxation obligations and also obligations under workers compensation laws.

Source agencies:

- WorkSafe VIC
- WorkCover SA
- WorkCover NSW
- WorkCover QLD
- WorkCover WA
- WorkCover NT
- WorkCover ACT
- WorkCover TAS.

Temporary Working Visas Data-Matching Program (January 2013)

The purpose of the program is to match temporary working visa data with taxpayer records to identify fraud and non-compliance with taxation obligations.

Source agency: Department of Immigration and Citizenship.

Online selling Data-Matching Program (February 2013)

The purpose of the program is to match sales data from online selling websites with taxpayer records to identify non-compliance of individuals and businesses with their taxation obligations

Source agencies: various online selling websites.

Matching agency: Department of Human Services

Commonwealth Seniors Health Card Data-Matching Program (September 2012)

The purpose of the protocol is to match tax return data with recipients of the Commonwealth Seniors Health Card to ensure eligible senior citizens receive benefits.

Source agency: Australian Taxation Office.

Australian Business Register Data-Matching Program (April 2013)

The purpose of the program is to match Australian Business Register data with Centrelink and Child Support customer data to identify business owners and operators who have had a change in their circumstances without notifying the Department of Human Services.

Source agency: the Australian Business Register.

eBay Data-Matching Program (April 2013)

The purpose of the program is to match eBay data with Centrelink and Child Support customers to assist with the collection of payments, debt recovery and fraud/non-compliance.

Source agency: eBay Incorporated.

Audits

Under the Privacy Act the Information Commissioner has the power to conduct privacy audits of Australian and ACT Government agencies, as well as some other organisations in certain circumstances.

In 2012–13, the OAIC commenced four audits and finalised five audits.

These audits help to determine and improve the level of compliance with the Privacy Act. The OAIC conducts audits to promote best privacy practice and to reduce privacy risks across agencies.

The Information Commissioner's audit powers include:

- auditing agency compliance with the IPPs — s 27(1)(h)
- examining the records of the Commissioner of Taxation in relation to TFNs and TFN information — s 28(1)(d)
- auditing TFN recipients — s 28(1)(e)
- auditing credit information files and credit reports held by credit reporting agencies and credit providers — s 28A(1)(g).

Other than audits conducted by using the above powers, the Information Commissioner may only audit a private sector organisation if the organisation requests this under s 27(3) of the Privacy Act.

Under reforms to the Privacy Act made by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*, from March 2014 audits will be known as 'assessments'. In addition, the Information Commissioner will have the power to conduct an assessment of both government agencies and private sector organisations.

An audit is a snapshot of personal information handling practices relating to the audited entity at a particular time and place. Audited entities are encouraged to consider audit findings broadly, and recognise that the issues identified may foster improvements beyond the audited program.

OAIC audits are an educative process that can convey an underlying message that compliance with the Privacy Act is part of good management practice. Audits have been the catalyst for improvements to agencies' data security, accuracy of information, staff training and disclosure policies.

The OAIC generally publishes finalised audit reports on its website.

ACT government audits

The OAIC currently has a Memorandum of Understanding (MOU) with the ACT Government, which includes a commitment by the OAIC to conduct one audit of an ACT Government agency per financial year. The OAIC selects audit targets based on a risk assessment analysis that takes into account previous audits and audit findings,

complaints against ACT Government agencies, the amount of personal information held by an agency and the sensitivity of, and risk to, that information.

In 2012–13, the OAIC commenced and/or finalised the following ACT Government audits.

ACT Territory and Municipal Services Directorate

The audit examined the ‘MyWay’ Travel card program that was introduced to the ACT public in March 2011. Processes regarding the handling of personal information collected as part of the MyWay Travel Card registration process were reviewed. This audit was commenced in February 2012. OAIC staff met with Territory and Municipal Services Directorate staff again in December 2012 and the audit was finalised in June 2013.

ACT Education and Training Directorate

The audit examined the policies, procedures and practices of the Education and Training Directorate with respect to third party access to student records, where the child is under 18, including where the personal information accessed is sensitive in nature. The audit commenced on 29 March 2013. The draft report is in progress as of June 2013.

Identity security audits

The OAIC provided privacy advice to key agencies about projects delivered under the Australian Government’s National Identity Security Strategy (NISS). One project under the NISS related to the National Document Verification Service (DVS).

The DVS system allows authorised government agencies to verify, online and in real time, the authenticity of an individual’s Evidence of Identity (EOI) documents sourced from another government agency, when enrolling for benefits and services. Agencies using the DVS are able to verify that:

- the EOI document was issued by the relevant source government agency
- details recorded on the EOI document correspond to the details held by the source government agency
- the document is still valid.

Lead responsibility for the development of the DVS rests with the Attorney-General’s Department.

In 2012–13, the OAIC commenced and/or finalised the following identity security audits.

Department of Foreign Affairs and Trade

The audit assessed the acts and practices of the Department of Foreign Affairs and Trade as an issuer agency, including the management of document verification requests and security processes in relation to personal information handling under the IPPs. The audit was commenced in November 2010 and finalised in December 2012.

Australian Taxation Office

This audit will assess the notification provided to ATO customers prior to use of the DVS system, as well as the practices and procedures used by the ATO to ensure the accuracy and completeness of personal information. The audit commenced in May 2013 and is ongoing as at 30 June 2013.

Australian Customs and Border Protection audits

The OAIC has an MOU with the Australian Customs and Border Protection Service (Customs) to conduct one audit each year of an aspect of Customs' use of European-Union (EU) Passenger Name Record (PNR) data.

In 2012–13, the OAIC finalised an audit (commenced in November 2011) which examined Customs handling of PNR data at the Brisbane and Gold Coast international airport arrivals terminals. The audit was finalised in July 2012.

In October 2012, an audit was commenced into requests for information for EU-sourced PNR data. The audit assessed the use and disclosure of both hard-copy and electronic EU-sourced PNR data, in response to requests for information for this data, against Customs' obligations under the Information Privacy Principles.

The OAIC audit teams found that Customs was generally maintaining its records of personal information in accordance with its IPP obligations under the Privacy Act. Where appropriate, the audit teams made recommendations to promote best privacy practice, and also made observations in relation to Customs' separate obligations under an agreement held with the EU for the provision of PNR data. The OAIC does not publish all Customs PNR audit reports on the OAIC website as some reports contain information that may affect the operational security of Australian Customs and Border Protection.

Healthcare Identifier audits

The *Healthcare Identifiers Act 2010* (HI Act) established the Healthcare Identifier Service (HI Service), which commenced on 1 July 2010. The HI Service is part of the Department of Human Services.

The functions of the HI Service are:

- to assign and issue individual healthcare identifiers (IHIs) for all individuals who have, are or will be provided with healthcare and to healthcare providers (HPI-Is) and healthcare provider organisations (HPI-Os)
- allow those authorised to access the HI Service to retrieve healthcare identifiers
- keep the information associated with healthcare identifiers up to date and accurate, including de-activating or retiring health identifiers when they are no longer needed.

Under s 29(3) of the HI Act, the Information Commissioner has the power to audit the handling of healthcare identifiers assigned to individuals and individual healthcare providers.

The OAIC received funding in 2011–12 under an Exchange of Letters agreement with the Department of Health and Ageing (DoHA) to undertake up to two healthcare identifier audits. Under a subsequent MOU between the OAIC and DoHA, for the period November 2012 to June 2014, the OAIC is to conduct up to two audits of the HI Service Operator (Department of Human Services) and up to two audits of agencies, organisations or state or territory authorities.

In 2012–13, the OAIC finalised an audit (commenced in June 2011) which examined the collection, storage and security, quality, use and disclosure of HPI-I information in keeping with the HI Service Operator’s obligations under the Privacy Act. This audit was finalised in August 2012.

In May 2013, the OAIC commenced an audit of the HI Service Operator examining the collection, use and disclosure of IHIs, HPI-I and associated identifying information by the HI Service Operator, after the HI record has been created and the IHI or HPI-I has been assigned and allocated. This audit was still in progress at 30 June 2013.

Personally Controlled Electronic Health Record audits

The *Personally Controlled Electronic Health Records Act 2012* (Cth) (PCEHR Act) establishes the personally controlled electronic health record (PCEHR) system.

The OAIC has various enforcement and investigative powers in respect of the PCEHR system, under both the PCEHR Act and the Privacy Act.

Under an MOU between the OAIC and DoHA, for the period November 2012 to June 2014, the OAIC is to conduct up to two audits of the PCEHR System Operator and up to two audits of organisations or agencies, upon invitation.

In May 2013, the OAIC commenced an audit examining policies and procedures for the collection of personal information during the PCEHR consumer registration processes and guidance material for collecting personal information via the assisted registration procedure. This audit was still in progress at 30 June 2013.

Personal Information Digest

To help people understand what personal information is held by each Australian and ACT government agency, IPP 5.3 in s 14 of the Privacy Act requires agencies to keep a record detailing:

- the nature of records kept
- the purpose for which these records are kept
- the categories of people the information is about
- the period for which the records are kept
- who has access to the records
- the steps an individual needs to take to gain access to the records.

These explanatory records must be provided to the OAIC in June of each year, and are subsequently compiled and published as the Personal Information Digest. With the commencement of the Privacy Act reforms on 12 March 2014, the Personal Information Digest will no longer be required to be published.

The ACT Justice and Community Safety Directorate (JACS) compiles the ACT Personal Information Digest and the final documents are published on the JACS website. The OAIC publishes the Personal Information Digest for Australian Government agencies on its website at www.oaic.gov.au.

Chapter 8

Freedom of information policy and compliance

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Chapter Eight

Freedom of information policy and compliance

Overview

2012–13 was the second full year of operation for the reforms to the *Freedom of Information Act 1982* (FOI Act) that commenced in November 2010. The Office of the Australian Information Commissioner (OAIC) undertook a range of activities to monitor compliance with the FOI Act by agencies and ministers, and to provide policy advice and guidance.

These activities included receiving 2448 enquiries, and finalising 419 applications (65.6% more than in 2011–12) for Information Commissioner review (IC review), 149 freedom of information (FOI) complaints (49.0% more), and 2290 notifications and extension of time requests (2.4% more). The Australian Information Commissioner also completed an own motion investigation (OMI) into the Department of Immigration and Citizenship's (DIAC) handling of complex and sensitive FOI requests.

The OAIC also provided a range of advice on FOI matters, including updating most parts of the *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines), several new fact sheets and agency resources and a range of other guidance.

Responding to FOI enquiries

The OAIC enquiries line (1300 363 992) provides information about FOI issues and FOI law for the cost of a local call. In 2012–13, the enquiries line received 18,205 telephone calls, 1159 of which specifically related to FOI matters that were within the jurisdiction of the OAIC (18.6% more than in the previous year). A further 688 telephone calls were received about FOI matters that were out of jurisdiction.

The OAIC's enquiries line also responds to written enquiries sent to the OAIC, whether received by post, email or fax. Of the 3142 written enquiries received by the OAIC in 2012–13, 472 related to FOI matters that were within jurisdiction of the OAIC. A further 129 written enquiries were received about FOI matters out of jurisdiction.

The OAIC is committed to responding to 90% of written enquiries within 10 working days. This benchmark was met in 2012–13, with 97.0% of FOI-related written enquiries responded to within 10 working days.

The majority of FOI enquiries were from individuals, indicating good public awareness of the availability of this information service.

Table 8.1 below sets out the types of enquirers who sought information from the enquiries line about FOI in 2012–13. This table includes information on both written and telephone enquiries.

Table 8.1 Types of FOI enquirers

Enquirer type	Number of enquiries
Individual	1692
Australian Government	622
Legal, accounting and management services	40
Business and professional associations	20
State Government	13
Health service providers	12
Media	10
Personal services (including employment, child care, vets)	5
Political and lobbying	5
Education	5
Local Government	4
Charities	2
Property, construction, architects and surveyors	2
Utilities	2
Insurance	2
Interest groups, theatre and sports	2
Religious organisations	1
Retail	1
Telecommunications	1
Clubs and pubs	1
Debt collectors	1
Finance (including superannuation)	1
ACT Government	1

Table 8.2 provides a breakdown of the types of enquiries made to the OAIC during 2012–13. The data in the table indicates that individuals contacted the OAIC enquiries line for advice in relation to FOI matters more often than Australian Government agencies. Approximately 44% of all calls about FOI matters related to general processes for FOI applicants, including making an FOI application or a complaint, or seeking a review. This table includes statistics on both written and telephone enquiries.

Table 8.2 Breakdown of issues in FOI enquiries received

Issue	Number of enquiries
General processes	1079
Processing by agency	435
Agency statistics	239
Access to general information	48
Access to personal information	37
Amendment and annotation	10
Vexatious application	7

Reviewing FOI decisions

The FOI Act provides that an FOI applicant who disagrees with an FOI decision can apply directly to the Information Commissioner as an alternative to, or after, internal review by the agency. The Information Commissioner can review decisions made by agencies and ministers under the FOI Act, including:

- decisions refusing to grant access to documents wholly or in part
- decisions that requested documents do not exist or cannot be found
- decisions granting access to documents, where a third party has a right to object (for example, if a document contains their personal information)
- decisions about charges imposed in relation to access requests, including decisions refusing to waive or reduce charges
- decisions refusing to amend or annotate records of personal information.

The IC review can be undertaken by the Information Commissioner, the Freedom of Information Commissioner (FOI Commissioner) or the Privacy Commissioner. A Commissioner's decision on IC review can be reviewed by the Administrative Appeals Tribunal (AAT), on the application of a party to the IC review.

IC review provides a simple, practical and cost-efficient system of external merits review. A Commissioner does not simply consider the reasons given by the agency or minister, but determines the correct or preferable decision in all the circumstances. During the reporting period, all IC reviews were conducted on the papers rather than through formal hearings. Part 10 of the FOI Guidelines details the process that the OAIC follows for IC reviews.

In determining an IC review application, the Commissioner has power to affirm, vary or set aside the decision under review. Many applications for review are finalised without a decision by the Commissioner. Applications may be resolved by agreement either formally (when the agreement is in terms that are within the powers of the Information Commissioner) or informally (where the applicant chooses to withdraw their IC review application because the agency has addressed the applicant's concern, such as by releasing information or providing a better explanation of its decision). The full text of each IC review decision is available on the Oaic website and on the Australasian Legal Information Institute website: www.austlii.edu.au.

In 2012–13, the Oaic received 507 applications for IC review, 11.2% more than in 2011–12.

In 483 applications (or 95.3% of all applications), IC review applicants sought review of access refusal decisions (including decisions on charges or amendment of personal records); 24 applications were for review of access grant decisions. Details of the agencies whose decisions were the subject of IC review applications in 2012–13 are given in Chapter 9.

The Oaic closed 419 IC reviews in 2012–13. Table 8.3 shows the outcome for all of these IC reviews. Eighty-nine (21.2%) were concluded through published decisions by the Information Commissioner, the FOI Commissioner or the Privacy Commissioner. Ministers' and agencies' decisions were affirmed in 58 of those published decisions (65.2%), and set aside or varied in 31.

Table 8.3 Information Commissioner reviews by outcome

Information Commissioner decision	Number
s 54N — out of jurisdiction or invalid	66
s 54R — withdrawn	95
s 54R — withdrawn/conciliated	20
s 54W(a) — deemed acceptance of preliminary view or appraisal	2
s 54W(a)(i) — lacking in substance	86
s 54W(a)(ii) — failure to cooperate	33
s 54W(a)(iii) — lost contact	9
s 54W(b) — refer to AAT	17
s 54W(c) — failure to comply with direction	2
s 55F — varied by agreement	0
s 55K — affirmed by IC	58
s 55K — set aside by IC	28
s 55K — varied by IC	3
Total	419

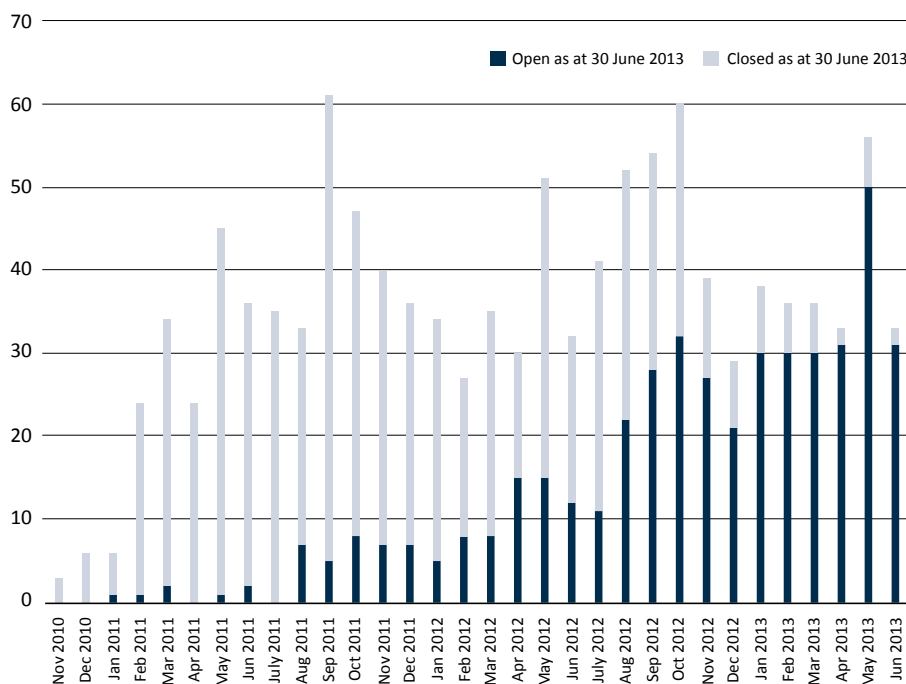
Sixty-six applications for IC review were outside the jurisdiction of the OAIC or invalid. In some cases applicants had sought review of FOI decisions made by state government agencies; in others, review was sought of matters that did not arise under the FOI Act: for example, a decision to grant or refuse an immigration visa application.

In some cases, the IC review application did not meet the requirements of a valid application, set out in s 54N. These requirements include that an application must be made in writing, and the applicant must provide the OAIC with a copy of the decision that they want reviewed. In each case, consideration was given to whether the OAIC could assist the applicant to make a valid review application or whether the applicant's concerns could usefully be addressed as a complaint or an enquiry.

Although no IC reviews were formally resolved in 2012–13 under s 55F (by way of written agreement between all parties to the IC review), 20 IC reviews were finalised by way of the applicant withdrawing their request for IC review, following action taken by the agency to resolve the applicant's concerns (such as by releasing information informally or making a revised decision under s 55G). The OAIC encourages resolution of IC reviews by agreement between the parties where possible.

Chart 8.1 shows the number of IC reviews received by the OAIC from the commencement of its operations in November 2010 until 30 June 2013. The darker part of each bar indicates the number of IC reviews received in each month and still on hand on 30 June 2013.

Chart 8.1 IC reviews received by month



Since early in its operation, the OAIC has had a backlog of IC reviews on hand: that is, not finalised. Despite a significant increase in the finalisation rate of IC reviews, on 30 June 2013 the OAIC had 447 IC reviews on hand, 25.2% more than the 357 on hand a year earlier. Of those IC reviews on hand at 30 June 2013, 105 (23.5%) were more than 12 months old.

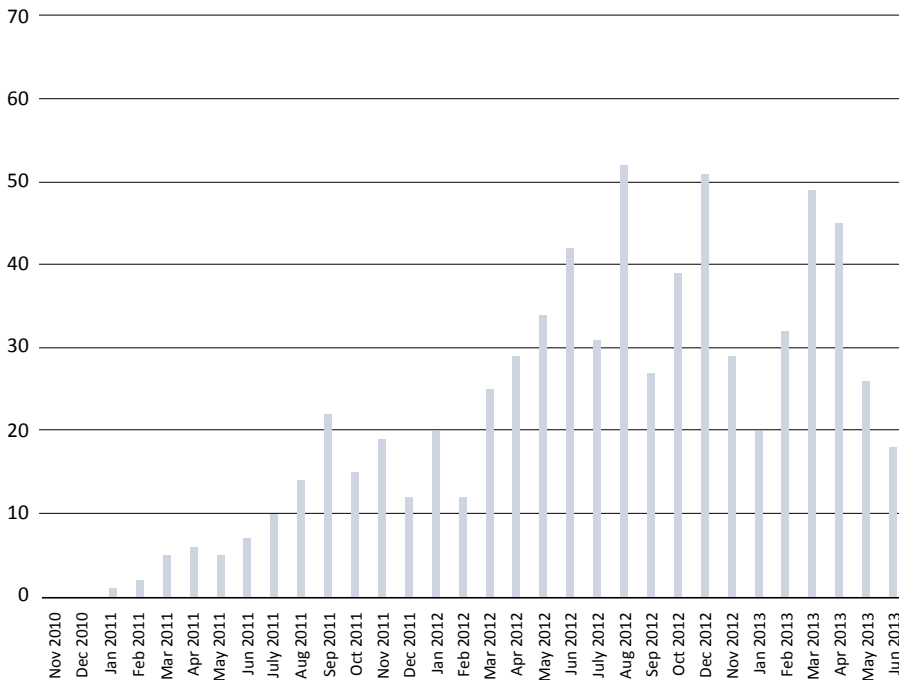
One of the OAIC’s deliverables (see Chapter 2) is to finalise 80% of all IC review applications within six months of receipt. In 2012–13, 40.0% were finalised within six months (in 2011–12, 32.8% were finalised within six months).

Before and during the reporting period, the OAIC took a number of steps to improve its efficiency in dealing with IC reviews and complaints. In May 2012, a Senior Executive Service (SES) officer was seconded from the Attorney–General’s Department to undertake a management review of the OAIC’s handling of FOI complaints and reviews. New processes were introduced. There were also further secondments and some non–ongoing staff were assigned to work in these areas on a temporary basis.

These changes were successful. The OAIC finalised 419 IC reviews during 2012–13, which is 65.6% more than the 253 finalised in 2011–12. Of these, 89 were finalised by way of a published decision in 2012–13: this is three-and-a-half times more than the 25 IC reviews finalised in this way in 2011–12.

The extent of the improvement in processing of IC reviews is clear from Chart 8.2, which shows the number of IC reviews closed by the OAIC from the commencement of its operations in November 2010 until 30 June 2013.

Chart 8.2 IC reviews closed by month



The OAIC is not funded to maintain the staffing levels that contributed greatly to the much-improved IC review finalisation rate in 2012–13. It is highly unlikely that that level of performance can be attained again without additional resources and changes to the system of IC review in the FOI Act (see the discussion of the Hawke Review, below). There are no prospects in the medium term of increased resourcing, or of further reform of the FOI Act. The OAIC will continue to look for ways to improve its processing of IC reviews and complaints within existing resourcing and legislative constraints.

FOI complaints and investigations

One of the Information Commissioner’s functions is to investigate agency actions relating to the handling of FOI matters. An investigation can arise from a complaint or can be conducted at the Commissioner’s own initiative. The Information Commissioner cannot investigate an action taken by a minister in dealing with FOI matters.

The complaints process is primarily intended to deal with the manner in which agencies handle FOI requests and procedural compliance matters. A complaint about the merits of an FOI access refusal or grant decision will usually be treated as an application for IC review, if this option is available.

Any person can complain to the Information Commissioner about actions taken by an agency in the performance of functions or the exercise of powers under the FOI Act. Investigations are conducted in private and in a way that the Information Commissioner thinks fit. Part 11 of the FOI Guidelines details the process that the OAIC follows in investigating complaints.

An FOI complaint investigation can end by a complainant withdrawing the complaint, the Information Commissioner providing written investigation results and recommendations to the respondent agency (which can be reported to the Parliament), or the Commissioner deciding not to investigate the complaint further. A decision not to investigate a complaint can be made before an investigation commences. A decision not to further investigate an FOI complaint can be made when the investigation is underway; for example, an investigation may reveal that an agency has adequately dealt with the complaint.

The Commonwealth Ombudsman has power to investigate FOI matters when it would be more appropriate or effective (for example, where the FOI complaint is only one part of a wider grievance about the agency’s actions). For further information, see Chapter 9.

In 2012–13, the OAIC received 148 FOI complaints, 17.5% more than in 2011–12.

Table 8.4 lists the agencies about which two or more complaints were made to the OAIC during 2012–13. Between 2011–12 and 2012–13, there has been a reduction in complaints about the Department of Immigration and Citizenship (from 17 to 11), and a marked increase in complaints against the Department of Human Services (from 23 to 40).

Table 8.4 Respondent agencies with two or more complaints

Agency	Complaints received
Department of Human Services	40
Australian Federal Police	12
Department of Immigration and Citizenship	11
Department of Defence	7
Australian Taxation Office	7
Department of Veterans Affairs	6
Comcare Australia	6
Commonwealth Ombudsman	4
Department of Finance and Deregulation	4
Department of Education, Employment and Workplace Relations	3
CRS Australia	3
Department of Health and Ageing	3
Airservices Australia	3
Australian Customs and Border Protection Service	3
Attorney-General's Department	3
Australian Government Solicitor	2
Australian Crime Commission	2
National Archives of Australia	2

Table 8.5 lists the issues raised in complaints. The total number of issues is more than the number of complaints received, because a complaint may raise more than one issue.

The most frequently raised issue in FOI complaints in 2012–13 was processing delay (in 52 complaints or 35.1% of all complaints received). Many complaints about timeliness could be avoided if agencies maintained open and regular communication with FOI applicants, helping them to focus the scope of their FOI request so it can be completed in a timely manner. Applicants are more willing to agree to extend processing times, or accept that extra time is necessary, if they understand the difficulties agencies face in processing requests.

Table 8.5 Issues raised in complaints received in 2012–13

Issue	Number of complaints
Processing delay	52
Unsatisfactory customer service	36
Agency failure to acknowledge request	24
Agency failure to assist with application	17
Processing error	17
Unsatisfactory reasons for decision	11
Inadequate search	10
Incorrect application of law	8
Excessive charges	6
Information publication scheme	1
Total	182

Many disputes about timeliness involved poor communication on the part of an agency that failed to keep the FOI applicant informed about the progress of their request. The OAIC has been working to encourage better communication between FOI applicants and agencies, both when complaints arise, and through day-to-day engagement with agencies in the processing of extension of time requests.

After timeliness, the next most common issue raised in complaints was unsatisfactory customer service (36 complaints). Dealing with complaints that fell into this category often involved investigating whether an agency took reasonable steps to assist the applicant to make their FOI request, as agencies are required to do by s 15(3) of the FOI Act.

A continuing complaint trend in 2012–13 was the failure of some agencies to send a letter acknowledging receipt of a person's FOI request as required by s 15(5)(b) of the FOI Act (24 complaints). An acknowledgement letter confirms the date on which the request was received and, therefore, the date on which the 30-day processing period expires. An FOI applicant has review rights if an agency fails to decide their request within the statutory timeframe.

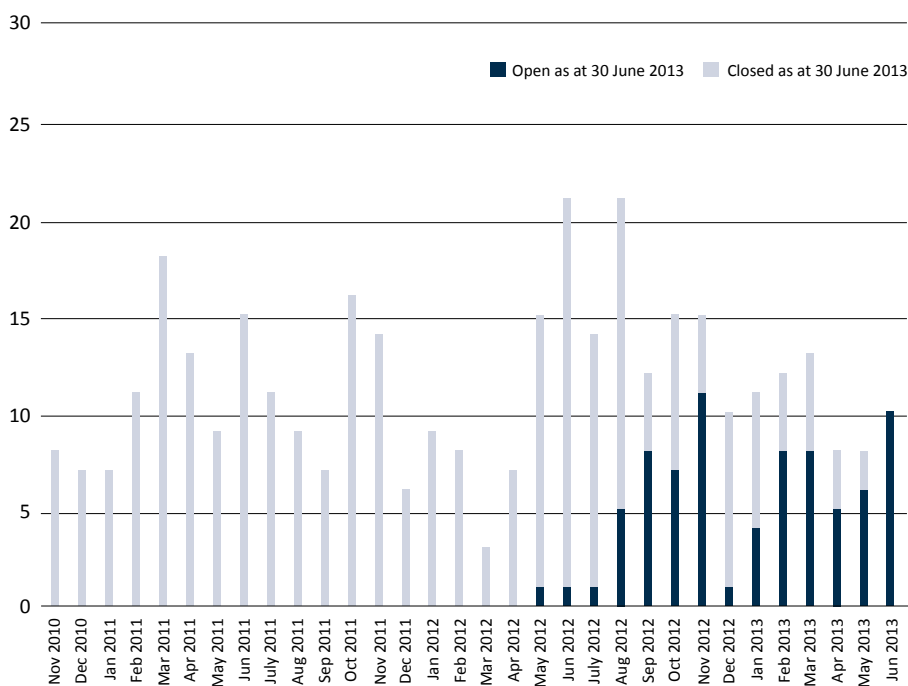
The OAIC closed 149 complaints in 2012–13. Those 149 complaints raised 188 separate issues. Table 8.6 indicates the way that those 188 issues were finalised.

Thirty-six complaint issues were withdrawn by the complainant. Twelve were withdrawn following action by the OAIC to conciliate between the complainant and the agency and, as a result, further investigation was not required.

Table 8.6 Method for finalising complaint issues

Finalisation method	Number of complaints
s 70 — not in jurisdiction	26
s 73(a) — not exercising power	2
s 73(b) — merits review	9
s 73(d)(i) — adequately dealt with	19
s 73(d)(ii) — dealing with complaint	3
s 73(e) — frivolous, vexatious, lacking in substance	25
s 73(f) — insufficient interest	11
s 86 — no recommendations made	43
s 86 — recommendations made	2
Complaint withdrawn	36
Complaint conciliated and withdrawn	12

Chart 8.3 shows the number of FOI complaints received by the OAI from the commencement of its operations in November 2010 until 30 June 2013. The darker part of each bar indicates the number of complaints received in each month and still on hand at 30 June 2013.

Chart 8.3 FOI complaints received by month

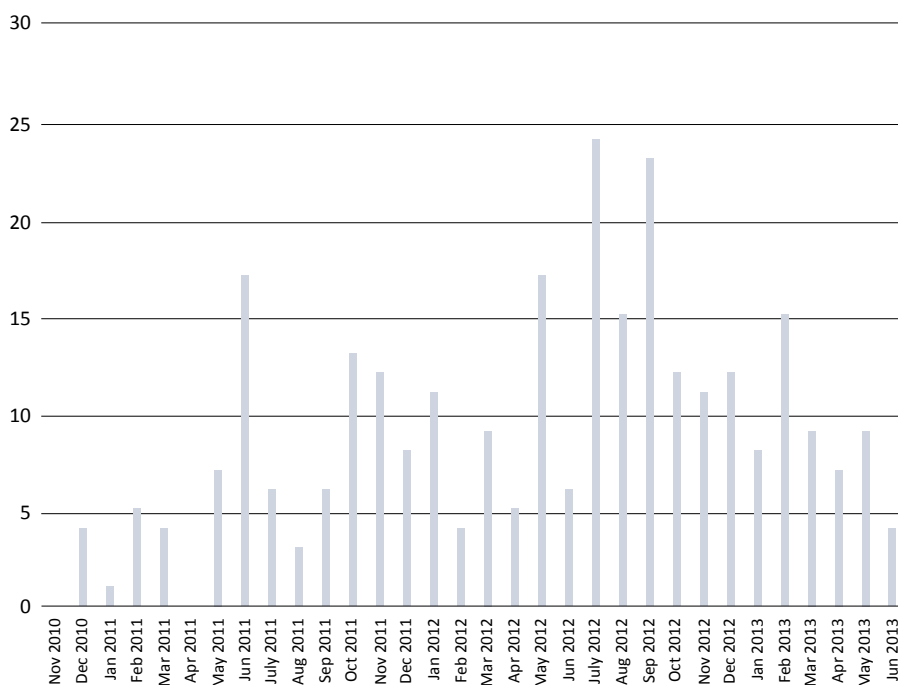
As with IC reviews, the OAIC has a backlog of complaints on hand: that is, not finalised. On 30 June 2013 the OAIC had 75 complaints on hand, the same number as were on hand a year earlier. Of those complaints on hand at 30 June 2013, only two (2.7%) were more than 12 months old.

One of the OAIC's deliverables (see Chapter 2) is to finalise 80% of all FOI complaints within 12 months of receipt. In 2012–13, 90.5% were finalised within 12 months (in 2011–12, 88.1% were finalised within 12 months).

As discussed above, the OAIC has taken a number of steps to improve its efficiency in dealing with FOI complaints. These changes were successful. The OAIC finalised 149 FOI complaints during 2012–13, which is 49.0% more than the 100 finalised in 2011–12.

The extent of the improvement in processing FOI complaints is clear from Chart 8.4, which shows the number of complaints closed by the OAIC from the commencement of its operations in November 2010 until 30 June 2013.

Chart 8.4 FOI complaints closed by month



The backlog of FOI complaints is not as large — or of as much concern — as the backlog of IC reviews. But, as noted above in relation to IC reviews, the OAIC continues to look to ways to improve its processing of IC reviews and complaints within existing resourcing and legislative constraints.

Own motion investigations

The Information Commissioner may undertake an own motion investigation (OMI), which may consider a single agency action or a systemic or recurring issue in an agency's FOI practices and processes.

On 26 September 2012, the Information Commissioner finalised an OMI into the Department of Immigration and Citizenship's (DIAC) handling of complex and sensitive FOI requests. This investigation considered DIAC's handling of 27 complex FOI requests, each of which had been the subject of a complaint to the OAIC, or an application for IC review. These FOI requests — by journalists, a member of Parliament and a community organisation — were for information on policy matters of public interest.

Since the finalisation of the OMI and consequent steps taken by DIAC to address the investigation findings, the number of complaints received by OAIC about the Department has decreased substantially (as noted above).

Investigation recommendations

On completion of a complaint investigation, the Information Commissioner may make 'investigation recommendations': formal recommendations to the respondent agency that the Commissioner believes the respondent agency ought to implement (s 88). In 2012–13, the Information Commissioner made three sets of investigation recommendations:

- on 26 September 2012, to DIAC as part of the OMI outlined above
- on 13 December 2012, to the Department of Veterans' Affairs (DVA) in relation to its use of s 24AB notices
- on 25 June 2013, to the Fair Work Commission (FWC) in relation to its use of precedent letters and templates.

Each of these agencies has subsequently taken action, adequate and appropriate in the circumstances (see s 89(1)(c)), to implement the investigation recommendations made.

Extensions of time

The FOI Act sets out timeframes within which agencies and ministers must process FOI requests. If a decision on a request is not made within the statutory timeframe, the agency or minister is deemed to have made a decision refusing the request and the FOI applicant can apply for IC review of that deemed decision.

The FOI Act also provides that an FOI charge cannot be imposed if a decision is not reached within the statutory timeframe. An applicant can agree in writing to extend the timeframe for a further 30 days. The Information Commissioner must be notified of any such agreement.

The Information Commissioner can grant an extension of time to enable an agency or minister to process a complex or voluminous FOI request, or when there was a deemed decision to refuse a request for documents or to amend or annotate a personal record. An extension granted after a deemed decision can provide a supervised timeframe for an agency or minister to finalise the request.

The Information Commissioner can also grant an extension of time to apply for IC review of an access refusal or access grant decision. The time limit for applying for IC review is 60 days for access refusal decisions and 30 days for access grant decisions.

The OAIC finalised 2290 extensions of time in 2012–13. Table 8.7 shows the number of notifications and extension of time requests finalised in 2012–13, and the outcomes for these. The OAIC endeavours to respond to extension of time requests from agencies within five working days. This is being achieved in most cases and is aided by good communication by agencies with the OAIC and applicants.

Table 8.7 Notifications and extension of time requests finalised

Request type	Granted or acknowledged	Granted but varied	Granted with conditions	Not granted	Invalid request	Withdrawn	Total number of requests
s 15AA	1508	0	0	0	17	2	1527
s 15AB	331	17	5	10	6	17	386
s 15AC	158	3	90	19	5	11	286
s 51DA	0	0	0	0	0	0	0
s 54D	41	0	7	0	4	2	54
s 54T	22	0	0	10	1	4	37
Total	2060	20	102	39	33	36	2290

Key:

s 15AA — notification of agreement between agency and applicant to extend time

s 15AB — extension of time for complex or voluminous request

s 15AC — extension of time where deemed refusal of FOI request

s 51DA — extension of time where deemed refusal of request to amend personal record

s 54D — extension of time where deemed affirmation of original decision on internal review

s 54T — extension of time for person to apply for IC review

Notifications and extension of time requests fall into four categories:

- An agency must notify the OAIC of an agreement it has made with an applicant under s 15AA of the FOI Act. 1527 (or 66.7%) of the notifications and extension of time requests finalised in 2012–13 were of this kind. In these cases, the OAIC registers the notification and acknowledges receipt to the agency. In one case the notification was subsequently withdrawn. Seventeen notices were determined to

be invalid because the extension agreements occurred after the requests had been deemed to be refused. The OAIC does not routinely scrutinise the validity of s 15AA notifications; this scrutiny occurs if an agency subsequently applies to the OAIC for a further extension of time, or in an IC review when the date of the agency's actual or deemed decision is at issue.

- An agency may seek an extension of processing time, under s 15AB of the FOI Act, on the basis that the statutory timeframe is insufficient to deal with the request because the request is complex or voluminous. The OAIC finalised 386 such applications in 2012–13. Three hundred and thirty-one of these (85.8%) were granted for the period of time sought by the agency. Seventeen applications (4.4%) were granted but for a lesser period than the agency sought. Ten applications (2.6%) were not granted.
- An agency may seek an extension of processing time, under s 15AC, s 51DA or s 54D of the FOI Act, where the agency is deemed to have refused the request because it has exceeded the time given under the FOI Act. The OAIC finalised 340 such applications in 2012–13. One hundred and ninety-nine of these (58.5%) were granted for the period of time sought by the agency. One hundred applications (29.4%) were granted but with conditions or for a lesser period than the agency sought. Nineteen applications (5.6%) were not granted.
- A person may seek an extension, under s 54T of the FOI Act, of the 60-day time period within which to apply for IC review. The OAIC finalised 37 such applications in 2012–13. Twenty-two of these (59.5%) were granted.

The extension of time provisions are an important feature of the FOI Act. They put pressure on agencies to process FOI requests within the statutory timeframes and encourage less formal and more interactive engagement between agencies and applicants about the scope of FOI requests and the expected processing times. As a result of these changes, and the opportunity for IC review of deemed decisions, agencies are more accountable for processing FOI requests in a timely way.

The OAIC encourages agencies and ministers to give early consideration to the possible need to obtain an extension of time from the Information Commissioner. Applicants are generally more willing to assist agencies to meet FOI deadlines (by narrowing the scope of requests or agreeing to extensions of time) when agencies have communicated the difficulties they face in finalising requests in a timely manner. By contrast, applicants may be unhappy, and complain about delay, if an agency approaches the OAIC for an extension of time without first consulting the applicant. Even when a request is complex or voluminous and an extension could be sought under s 15AB, the OAIC encourages agencies to first speak to applicants about the reasons why further time is required to process requests.

In deciding whether to grant an extension, the OAIC has regard to the impact this might have on an applicant. However, while this can be influential it is not determinative.

Vexatious applicant declaration requests

The Information Commissioner has power to declare a person to be a vexatious applicant if satisfied that the grounds set out in s 89L of the FOI Act exist. An agency or minister can apply to the Commissioner to make a declaration or the Commissioner can act on his or her own motion. A vexatious applicant declaration is not an action that the Commissioner will undertake lightly, but its use may be appropriate at times. A declaration by the Information Commissioner can be reviewed by the AAT. Part 12 of the FOI Guidelines provides guidance on such declarations.

During 2012–13, the Information Commissioner received three applications from agencies, under s 89K, seeking to have a person declared a vexatious applicant. Four applications were finalised: two declarations were made under s 89K; two applications were refused.

Information Publication Scheme

Part II of the FOI Act establishes the Information Publication Scheme (IPS) which requires agencies to publish a broad range of information on their websites, including an information publication plan showing how the agency proposes to comply with the IPS.

In 2011–12, the OAIC surveyed 191 agencies on their compliance with their IPS obligations, assessing agencies against five key criteria set out in the FOI Guidelines. The OAIC published a report outlining the results of that survey in August 2012. Overall, the results indicated that agencies were complying positively with most of the five key IPS criteria. 94% of agencies reported that they had published an agency IPS plan and more than 85% of agencies published each of the required types of information on their website. The survey also showed that 71% of agencies had a mechanism in place for identifying other information that could be published under the IPS. Over 90% of agencies indicated that they had appointed a senior executive officer with IPS responsibility and over 75% indicated that they had IPS policies and procedures in place. However, there was scope for improvement with regard to having:

- a formal IPS governance structure
- training arrangements (at both the induction and on-going stages)
- IPS complaint handling procedures.

With regard to web accessibility, only 20% of agencies indicated that the documents they have published under the IPS are in a format (or multiple formats) that conform to the Web Content Accessibility Guidelines (WCAG) 2.0 requirements. A further 30% indicated that most of their documents comply.

The OAIC's February 2013 information policy report *Open public sector information: from principles to practice* (discussed in Chapter 5) also contained results relevant to the IPS. Twenty-one per cent of agencies said that identifying information to be published in addition to the mandatory IPS (and FOI disclosure log) publication requirements was

the most challenging aspect of implementing open access to information as a default position. Reasons cited included the lack of an agency register of information assets and problems reconciling open access with confidentiality, security or privacy concerns.

During 2012–13 the OAIC also revised guidance on how FOI information is presented on agency websites (including information in agency IPS entries). Further information is provided below.

Disclosure log

All Australian Government ministers and agencies that are subject to the FOI Act are required to publish an FOI disclosure log on their website. The disclosure log lists information that has been released in response to a request under the FOI Act. There are some exceptions to this requirement: for example, agencies are not required to place on the disclosure log information about any person if publication of that information would be unreasonable.

In 2012–13 the Information Commissioner assisted agencies, ministers and the public to understand the disclosure log requirements by updating the FOI Guidelines, and by providing written and verbal responses to requests for information and advice.

Information was also collected for the first time in 2012–13 from agencies and ministers on disclosure log activity. The intention to collect this information is explained in paragraph [14.71] of the FOI Guidelines. A total of 118 agencies and ministers provided information. Collectively, they reported that 859 documents could be downloaded from the agency's or minister's website, 18 documents from another website, and in 433 instances the agency or minister made the documents available by another means (usually upon request for documents listed in the disclosure log). The agencies and ministers also reported a total of 97,106 unique visits to disclosure logs and 899,955 page views.

During 2012–13, three entries were added to the OAIC's own disclosure log. These entries, including copies of the released documents, can be found on the OAIC website.

Assisting agencies

One of the OAIC's important roles is to assist agencies that are subject to the FOI Act to comply with their obligations under that Act. Details of agency FOI activities are given in Chapter 9.

In May 2012, the Department of Health and Ageing (DoHA) applied for IC review of a decision of IP Australia. Before deciding whether to undertake an IC review, the OAIC raised with DoHA the question of whether an agency can be a person for the purposes of the FOI Act: that is, whether an agency can make an access request under the FOI Act for documents of another agency. In October 2012, DoHA withdrew its application for IC review.

In March 2013, the FOI Commissioner wrote to the Secretary of the Department of Foreign Affairs and Trade (DFAT). The OAIC had been made aware of a document, published on DFAT's disclosure log, which raised concerns that DFAT might not be fully aware of the effect of the 2010 reforms of the FOI Act and the pro-disclosure nature of the amended FOI Act. The document was an email from a DFAT officer to officers of the United States government. It mistakenly stated that '[t]he starting position for deciding on FOI release is that all diplomatic exchanges are presumed to be in confidence, that their release would cause damage to our relationships, and that they should therefore be exempt' under s 33. The Secretary of DFAT replied in April 2013, confirming that 'DFAT decision-makers consider carefully each requested document when deciding whether it should be released or an exemption claimed'.

Guidelines issued under s 93A of the FOI Act

Agencies must have regard to Guidelines issued by the Information Commissioner under s 93A of the FOI Act when they are performing a function or exercising a power under that Act. The FOI Guidelines provide guidance to agencies and ministers on FOI administration and on how the Information Commissioner interprets and applies the FOI Act.

Most parts of the Guidelines were updated in 2012–13 to reflect legislative changes, IC review decisions, relevant decisions of the AAT and Federal Court, and other developments affecting the operation of the FOI Act. Notable updates included:

- Noting in Parts 2, 3 and 5 that the Parliamentary Budget Office (PBO) and the Parliamentary Budget Officer are exempt under the FOI Act. Related updates affecting all agencies and ministers subject to the FOI Act included the exemption for PBO documents in s 45A and the discretion under s 25 of the FOI Act to neither confirm nor deny the existence of a document falling under that exemption.
- Revising Part 3, and publishing an accompanying statement from the Information Commissioner, to provide new advice about who qualifies as a 'person' eligible to make a request under s 15 of the FOI Act.
- Amending Parts 9 and 10 to clarify the review rights of affected third parties following decisions to grant access to documents. These amendments followed the release in August 2012 of a discussion paper by the Information Commissioner about third party review rights.

These amendments are outlined in a table of links to archived versions of the FOI Guidelines available on the OAIC website. That table also summarises significant changes between each version of the Guidelines.

The latest version of the Information Commissioner's FOI Guidelines is available on the OAIC's website.

Agency resources

The OAIC publishes agency resources to assist agencies in applying the FOI Act. In 2012–13 the OAIC published a new FOI agency resource on administrative access schemes. The resource explains how agencies can establish schemes designed to provide access to information quickly and efficiently outside of the FOI Act process.

Agency resources are advisory only and do not bind agencies. Agency resources are available on the OAIC's website.

Other guidance material

The OAIC publishes other guidance material in relation to FOI, which is also available at the OAIC's website. During 2012–13, the OAIC published *Guidance for agency websites: 'Access to information' web page*, which updated the Information Commissioner's previous guidance on how agency websites should present information about making an FOI request, and how agencies should set out their IPS entry and FOI disclosure log. The updated guidance introduced a new, optional 'access to information' approach, where agencies can choose to give greater prominence to means of accessing information other than the formal FOI access request process.

The OAIC also published a set of commonly asked questions for agencies about the operation of the FOI Act. The questions covered a wide range of issues including how agencies should process FOI requests, how and when to release documents to an FOI applicant, agency obligations with regard to Commonwealth contracts, and how agencies should manage their disclosure logs and IPS.

FOI advice provided

The OAIC provided advice to agencies and the public on the operation of the FOI Act, including on:

- charges — including contesting the imposition of a charge after paying the charge, and cases where an applicant decides to reduce the scope of their FOI request in response to a charge
- exemptions and conditional exemptions
- deferral of access
- transferring requests to other agencies or ministers
- processing requests for the same or similar documents
- the interaction between requirements of an FOI request in s 15 and the operation of the practical refusal mechanism in s 24AA
- online accessibility implications of IPS and disclosure log publication obligations
- the IPS — including the definition of 'operational information', recommended headings, whether legacy material must be published, and the release of statistical data
- the disclosure log — including staff privacy and the operation of *FOI Disclosure Log Determination 2011–1*
- national regulatory schemes — the OAIC's jurisdiction in cases where Australian Government or State Government agencies have adopted a modified version of the FOI Act to respond to requests for particular documents
- agency reporting obligations.

Assisting the public

The OAIC has published a range of materials to assist the public in understanding the FOI process and the OAIC's role and functions. All of this information is available on the OAIC website, including:

- general information about the OAIC and the FOI process
- information about how to seek IC review (including an online IC review application form)
- information on how to make an FOI complaint to the OAIC (including an online complaint form)
- fact sheets covering a range of issues including charges, exemptions, review rights and how to make a complaint
- presentations delivered at Information Contact Officer Network meetings
- speeches on FOI by the Commissioners.

In 2012–13 the OAIC published a set of commonly asked questions for individuals about the operation of the FOI Act. The questions covered issues including what information is available under the FOI Act, how the FOI request process works and when individuals can complain about an agency's actions or apply for review of an agency's FOI decision.

The OAIC also published a new fact sheet about extensions of time under the FOI Act. The fact sheet explains when the usual 30-day timeframe for processing an FOI request may be extended and other matters that may effect that timeframe.

Other developments

Amendment of the FOI Act and Regulations

Several amendments to the FOI Act were made during the reporting period.

The *Freedom of Information Amendment (Parliamentary Budget Office) Act 2012* came into force on 4 December 2012. It introduced a new exemption for PBO documents (s 45A) and expanded the scope of s 25(2) to allow agencies and ministers to neither confirm nor deny the existence of documents falling under the new exemption.

The *Royal Commissions Amendment Act 2013* came into force on 28 March 2013. It exempts all agencies and ministers from the operation of the FOI Act in relation to documents containing information obtained at a private session before the Child Sexual Abuse Royal Commission that identifies a natural person who appeared at a private session, or that contains information summarised or extracted from a private session (s 7(2E)).

The *Courts Legislation Amendment (Judicial Complaints) Act 2012* came into force on 12 April 2013. It provides that the FOI Act does not apply to certain documents of the Federal Court, the Family Court and the Federal Circuit Court of Australia that relate to complaint handling.

There were no amendments to the regulations made under the FOI Act during the reporting year.

Review of NBN Co Ltd compliance with FOI

On 16 April 2012, the Attorney-General announced a statutory review of the application of the FOI Act to NBN Co. The Government appointed Stuart Morris QC to conduct the review. As reported in the OAIC's *Annual Report 2011–12*, the Freedom of Information Commissioner met with Mr Morris, and provided some information to the review about the OAIC's interactions with NBN Co.

On 16 August 2012, the Attorney-General tabled the report of the review. The review found that NBN Co had complied with its lawful requirements in administering the FOI Act, had used a careful process to identify exempt documents, had sought to minimise the cost to applicants, had operated in a timely manner, and had generally adopted a pro-disclosure attitude.

Exclusion of the Parliamentary departments from the FOI Act

As explained in the OAIC's *Annual Report 2011–12*, for years it had been assumed that the FOI Act did not apply to the Parliamentary departments: the Department of the House of Representatives, the Department of the Senate and the Department of Parliamentary Services. It came to light in December 2011 that the Parliamentary departments had become subject to the FOI Act with the passage of the *Parliamentary Service Act 1999*, and the Information Commissioner amended the FOI Guidelines to reflect this fact in May 2012.

The *Parliamentary Service Amendment (Freedom of Information) Act 2013* came into force on 28 June 2013. It amended the *Parliamentary Service Act* to retrospectively exempt the Parliamentary departments, and people holding or performing the duties of an office established under that Act, from the operation of the FOI Act. The Minister's second reading speech noted that the amending legislation was an interim measure pending consideration of recommendations on this issue from the review of the FOI Act undertaken by Dr Allan Hawke AC (discussed below).

Hawke Review of the FOI Act and AIC Act

On 31 October 2012, the Attorney-General announced that Dr Allan Hawke AC would undertake a review of the operation of the FOI Act and the *Australian Information Commissioner Act 2010* (AIC Act), as required by s 93B of the FOI Act and s 33 of the AIC Act. The terms of reference stipulated that the review should consider:

- (a) the impact of reforms to freedom of information laws in 2009 and 2010, including the new structures and processes for review of decisions and investigations of complaints under the FOI Act, on the effectiveness of the FOI system;
- (b) the effectiveness of the Office of the Australian Information Commissioner;
- (c) the effectiveness of the new two-tier system of merits review of decisions to refuse access to documents and related matters;

- (d) the reformulation of the exemptions in the FOI Act including the application of the new public interest test taking into account:
 - (i) the requirement to ensure the legitimate protection of sensitive government documents including Cabinet documents; and
 - (ii) the necessity for the government to continue to obtain frank and fearless advice from agencies and from third parties who deal with government;
- (e) the appropriateness of the range of agencies covered, either in part or in whole, by the FOI Act;
- (f) the role of fees and charges on FOI, taking into account the recommendations of the Information Commissioner's review of the current charging regime; and
- (g) the desirability of minimising the regulatory and administrative burden, including costs, on government agencies.

In December 2012, the Information Commissioner and the FOI Commissioner made a submission to the review. It addressed the terms of reference and made 30 proposals for reform. In broad terms, these proposed:

- establishing a national action plan to further develop and embed the open government agenda and the Government's commitment to cultural change
- embedding a strong administrative access framework in agencies to complement formal FOI access rights
- considering whether the FOI Act's focus on documents rather than information is appropriate given the changes to how information is electronically recorded and shared since the FOI Act's commencement in 1982
- removing Part V of the FOI Act so that the *Privacy Act 1988* provides the sole mechanism for requests to amend personal information
- numerous changes to the Information Commissioner review process to provide for faster and more efficient review of decisions, and broader scope for resolving applications by agreement between the parties to a review
- addressing issues with the FOI charging framework, largely through adoption of the recommendations from the Information Commissioner's February 2012 review of charges under FOI Act
- excluding certain types of documents, such as incoming government briefs and parliamentary question time briefs, from the operation of the FOI Act for a defined period after the creation of the documents
- considering the appropriateness of the continuing exemption of intelligence agencies from the FOI Act, noting the approaches taken in other jurisdictions and the existence of exemptions that can be applied on a document-by-document basis
- that the FOI Act continue (as it did at that point) to apply to Parliamentary departments other than the PBO, with consideration given to the need for an exemption for research/advice to Members of Parliament provided by the Parliamentary Librarian

- numerous measures to allow agencies to more efficiently process FOI requests, including streamlined extension of time provisions, and the introduction of a reviewable vexatious request power for agencies.

The submission also included a table identifying technical issues in the FOI Act and AIC Act that hinder the smooth functioning of the FOI regime and create regulatory complexity for agencies.

On 20 February 2013, the Information Commissioner and the FOI Commissioner made a supplementary submission to the review. This covered issues which came to light following their December submission, and made five further recommendations.

The submission and supplementary submission are available at the OAIC's website. Dr Hawke's report was tabled on 2 August 2013, outside the reporting period.

30th anniversary of the FOI Act

In November 2012, the OAIC held an event in Canberra to celebrate the 30th anniversary of the FOI Act. Further information about this event can be found in Chapter 4.

Chapter 9

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Chapter Nine

Agency freedom of information activity

Overview

This chapter has been prepared using data collected from ministers and agencies subject to the *Freedom of Information Act 1982* (FOI Act). Ministers and agencies are required to provide, among other details, information about:

- the number of freedom of information (FOI) requests made to them
- the number of decisions they made granting, partially granting or refusing access, and the number and outcome of applications for internal review
- the number and outcome of requests to them to amend personal records
- charges collected by them.¹

The Office of the Australian Information Commissioner (OAIC) maintains a web-based system for the electronic lodgement of FOI statistical information by agencies. It collects information about agencies' use of exemptions, practical refusal processes, and staff resources and other costs associated with compliance with Information Publication Scheme (IPS) provisions.

The data given by ministers and agencies for the preparation of this annual report is published on the OAIC website.

Requests for access to documents

Types of FOI requests

The term 'FOI request' means a request for access to documents under s 15 of the FOI Act. Applications for amendment or annotation of personal records under s 48 are dealt with separately below.

The FOI Act requires that agencies and ministers provide access to documents in response to requests that meet the requirements of s 15 of the FOI Act. The figures in this report do not take account of applications that did not satisfy those requirements.

Numbers of FOI requests received

Table 9.1 provides a comparison of the number of FOI requests received in each of the last five reporting years. Chart 9.2 (see later in chapter) shows the total number of FOI requests received each year since the commencement of the FOI Act in 1982.

¹ Australian Government ministers and agencies, and the Norfolk Island administration, are required by s 93 of the FOI Act and reg 5 of the *Freedom of Information (Miscellaneous Provisions) Regulations 1982* to submit statistical returns to the OAIC every quarter.

Table 9.1 Total FOI requests received 2008–09 to 2012–13

2008–09	2009–10	2010–11	2011–12	2012–13
27,561	21,587	23,605	24,764	24,944

Following the FOI reforms that commenced in November 2010, FOI request numbers have increased, although not to the peak levels experienced in 2003–04. The rate of increase since the 2010 reforms has slowed. Australian Government agencies received 24,944 FOI requests in 2012–13, a small (0.7%) increase on the number received in the previous year. Request numbers increased 4.9% in 2011–12 and 9.3% in 2010–11.

In recent years, agencies have reported anecdotally that the number of requests for documents and information, both within and outside the FOI Act, has increased. This may be due in part to greater awareness of the right of access under the FOI Act and of information rights generally following the commencement of the FOI reforms and the establishment of the Oaic.

FOI requests for personal information and for other information

Since 2000–01, agencies and ministers have reported separately the number of FOI requests received for documents containing personal information and for documents containing ‘other’ information. A request for personal information means a request for documents that contain information about a person who can be identified. A request for ‘other’ information means a request for all other documents, such as documents concerning policy development and government decision making.

19,827 (or 79.5%) of all FOI requests in 2012–13 were for documents containing personal information. The percentage of such requests has decreased from 80.7% in 2011–12 and 82.6% in 2010–11. Some of this decrease can be attributed to system and process improvements in some larger agencies that has led to the release of personal information outside of the FOI Act.

Number of FOI requests received by different agencies

In 2012–13, the Department of Immigration and Citizenship (DIAC), the Department of Veterans’ Affairs (DVA) and the Department of Human Services (DHS) continued to receive the majority of FOI requests (69.3% of the total). Commonly, the bulk of requests to these agencies are from customers or clients seeking access to documents containing their own personal information or case file information.

The 20 agencies that received the largest number of requests in 2012–13 are shown in Table 9.2, with a comparison to the number of requests each received in 2011–12. The top five agencies in 2012–13 are the same as those in 2011–12: DIAC, DVA, DHS, the Australian Taxation Office (ATO), and the Migration Review Tribunal (MRT).

DIAC’s request numbers increased by 561 in 2012–13 (a 6.3% increase over 2011–12) and its proportion of the total number of requests received by Australian Government agencies increased from 36.0% in 2011–12 to 37.7% in 2012–13. However, DVA, DHS

and the ATO all experienced decreases in the number of requests received (3.5%, 4.2% and 9.9% respectively) and in their proportions of the total number of requests received by Australian Government agencies.

As noted above, the total number of requests received increased only slightly (0.7%) in 2012–13. However, no clear trend in request numbers emerges across the Australian Government. In 2012–13, some agencies in the top 20 experienced significant increases in the number of requests received: for example, the Australian Postal Corporation (a 98.9% increase); the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (DIICCS RTE — 97.6%); the Australian Pesticides and Veterinary Medicines Authority (APVMA — 51.5%); ComSuper (47.0%); the Australian Customs and Border Protection Service (Customs — 25.9%); the Department of Defence (24.0%); and the Australian Federal Police (AFP — 23.4%).

However, other top 20 agencies experienced significant decreases in request numbers: the Attorney-General’s Department (AGD — 33.8%); the Department of Health and Ageing (DoHA — 23.5%); the Department of Foreign Affairs and Trade (DFAT — 12.0%); and the Department of the Treasury (11.0%).

Four agencies that appeared in last year’s top 20 agencies have experienced significant decreases in their numbers of FOI requests and no longer appear in the top 20: the Commonwealth Ombudsman (requests decreased by 57.1% in 2012–13); the Department of the Prime Minister and Cabinet (PM&C) (26.7%); Comcare (25.8%), and the Department of Finance and Deregulation (16.1%).

The increase in the number and proportion of FOI requests for other (non-personal) information continued in 2012–13, with a 7.1% increase. This follows a 16.4% increase in 2011–12 and a 48.4% increase in 2010–11. These increases have a significant impact on agencies because non-personal requests typically require more agency resources to process than requests for personal information. Over the past three years, the combined increase in the number of FOI requests for non-personal information has been 85.1%.

FOI requests determined

In 2012–13, agencies and ministers processed FOI requests as follows (previous year figures are in round brackets):

- on hand at the beginning of the year: 2411 (2849)
- received during the year: 24,944 (24,764)
- requiring determination (ie on hand at the beginning of the year or received during the year): 27,355 (27,613)
- withdrawn: 2077 (2034)
- transferred: 833 (909)
- determined (ie access granted in full or in part, or refused): 21,764 (22,237)
- finalised (ie withdrawn, transferred or determined): 24,674 (25,180)
- on hand at the end of the year (ie requiring determination but not finalised): 2681 (2433).

The number of FOI requests on hand at the end of 2012–13 was 10.2% more than at the end of 2011–12. This increase in the number of requests on hand may reflect the greater proportion of non-personal requests received by agencies in the past year. Such requests may take longer to process and consume more agency resources.

The number of requests transferred to other agencies decreased by 8.4% in 2012–13. However, this follows significant increases in the number of transfers over each of the previous three reporting years. The number of requests transferred in 2012–13 (833) is comparable to the number transferred in 2010–11 (861). The large number of transfers may be the result of the increase in non-personal requests since the 2010 reforms. Such requests may be more complex and applicants may not in the first instance address their request to the agency that holds the documents they seek. Another contributing factor may be that a higher proportion of such documents relate to joint agency activity.

The increase in the number of transferred requests has the potential to lead to delays in FOI processing if the transferring agencies fail to quickly action those transfers.

Table 9.2 Top 20 agencies by numbers of FOI requests received

AGENCY	2011–12				%	2012–13				%	Change Total
	Rank	Personal	Other	Total		Rank	Personal	Other	Total		
Department of Immigration and Citizenship	1	8667	171	8838	36.0	1	8911	488	9399	37.7	+561
Department of Veterans' Affairs	2	4379	22	4401	17.9	2	4115	130	4245	17.0	-156
Department of Human Services	3	3716	75	3791	15.4	3	3512	120	3632	14.6	-159
Australian Taxation Office	4	385	588	973	4.0	4	357	520	877	3.5	-96
Migration Review Tribunal	5	467	0	467	1.9	5	553	1	554	2.2	+87
Australian Federal Police	7	277	104	381	1.6	6	356	114	470	1.9	+89
Department of Defence	11	195	139	334	1.4	7	232	182	414	1.7	+80
Refugee Review Tribunal	6	380	6	386	1.6	8	343	21	364	1.5	-22
Trade Marks Office	9	0	362	362	1.5	9	0	332	332	1.3	-30
Department of Education, Employment and Workplace Relations	8	233	136	369	1.5	10	178	151	329	1.3	-40

AGENCY	2011–12					2012–13					Change Total
	Rank	Personal	Other	Total	%	Rank	Personal	Other	Total	%	
Department of Health and Ageing	10	8	353	361	1.5	11	4	272	276	1.1	-85
Australian Securities and Investments Commission	13	78	192	270	1.1	12	53	198	251	1.0	-19
Attorney-General's Department	12	102	212	314	1.3	13	58	150	208	0.8	-106
ComSuper	19	131	1	132	0.5	14	187	7	194	0.8	+62
Australian Postal Corporation*	-	88	5	93	0.4	15	130	55	185	0.7	+92
Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education**	-	23	60	83	0.3	16	88	76	164	0.7	+81
Department of Foreign Affairs and Trade	15	75	100	175	0.7	17	68	86	154	0.6	-21
Australian Pesticides and Veterinary Medicines Authority*	-	0	99	99	0.4	18	0	150	150	0.6	+51
Australian Customs and Border Protection Service*	-	41	75	116	0.5	19	51	95	146	0.6	+30
Department of the Treasury	17	9	146	155	0.6	20	8	130	138	0.6	-17
Top 20	-	19,369 [^]	2948 [^]	22,317 [^]	90.1	-	19,204	3278	22,482	90.1	+382
Remaining agencies	-	619	1828	2447	9.9	-	623	1839	2462	9.9	+15
Total	-	19,988	4776	24,764	100.0	-	19,827	5117	24,944	100.0	+397

* Denotes an agency not listed in the top 20 agencies in 2011–12.

[^] Shows the total for the top 20 agencies in 2011–12 (ie includes figures for four agencies not in the top 20 agencies in 2012–13).

** From 26 March 2013, the Department of Industry, Innovation, Science, Research and Tertiary Education assumed responsibility for functions associated with Climate Change and its name was changed to the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education.

Table 9.3 shows how FOI requests were determined in 2011–12 and 2012–13 broken into requests for personal and other (non-personal) information.

Table 9.3 FOI requests determined

Decision	2011–12				2012–13			
	Personal	Other	Total	%	Personal	Other	Total	%
Granted in full	12,157	995	13,152	59.1	11,366	1093	12,459	57.3
Granted in part	4942	1569	6511	29.3	5272	1723	6995	32.1
Refused	1631	943	2574	11.6	1244	1066	2310	10.6
Total	18,730	3507	22,237	100.0	17,882	3882	21,764	100.0

In each of the last five reporting years there has been a decrease in the percentage of requests granted in full: 71.0% were granted in 2008–09, 63.8% in 2009–10, 60.9% in 2010–11, 59.1% in 2011–12 and 57.3% in 2012–13. This decrease applies to requests for both personal and for other information.

89.4% of requests were granted in full or in part in 2012–13, more than in the previous year. This is in contrast with each of the previous four reporting years when there was a decrease in the proportion of requests granted in full or in part: 93.9% were granted in full or in part in 2008–09, 92.5% in 2009–10, 90.6% in 2010–11, and 88.4% in 2011–12.

The figures for FOI requests that were refused include cases in which the documents sought do not exist or cannot be found, as well as cases in which exemptions have been applied.

Table 9.4 lists the top 20 agencies by the number of FOI decisions they have made.

Table 9.4 shows significant differences in the outcome of FOI requests between those agencies processing the largest number of requests in 2012–13. Three of the agencies in the top 20 refused 30% or more of the FOI requests they received during 2012–13: the Australian Securities and Investments Commission (ASIC) refused 44.2%, DoHA 38.0% and the AFP 30.0%. ASIC's refusal rate has decreased from 2011–12, when it refused 50.9% of all requests. Seven of the top 20 agencies refused fewer than 10% of the FOI requests they received: the Trade Marks Office refused 0.3%; ComSuper 1.0%, MRT 1.3%, DVA 2.0%, the Refugee Review Tribunal (RRT) 4.2%, APVMA 7.2% and DIAC 7.5%.

Table 9.4 Top 20 agencies by numbers of FOI requests determined

Agency	Granted in full	%	Granted in part	%	Refused	%	Total
Department of Immigration and Citizenship	5138	56.0	3355	36.6	685	7.5	9178
Department of Veterans' Affairs	3638	97.2	31	0.8	75	2.0	3744
Department of Human Services	1741	56.4	1015	32.9	331	10.7	3087
Australian Taxation Office	128	16.7	523	68.4	114	14.9	765
Australian Federal Police	36	8.4	261	61.6	127	30.0	424
Department of Defence	63	21.0	194	64.7	43	14.3	300
Trade Marks Office	165	56.1	128	43.5	1	0.3	294
Attorney-General's Department	38	13.4	196	69.3	49	17.3	283
Refugee Review Tribunal	192	73.8	57	21.9	11	4.2	260
Migration Review Tribunal	150	65.5	76	33.2	3	1.3	229
ComSuper	177	92.7	12	6.3	2	1.0	191
Department of Education, Employment and Workplace Relations	110	58.8	49	26.2	28	15.0	187
Department of Health and Ageing	39	21.8	72	40.2	68	38.0	179
Australian Postal Corporation	122	71.3	10	5.8	39	22.8	171
Australian Securities and Investments Commission	35	23.8	47	32.0	65	44.2	147
Australian Pesticides and Veterinary Medicines Authority	99	79.2	17	13.6	9	7.2	125
Australian Customs and Border Protection Service	27	24.8	61	56.0	21	19.3	109
Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education	32	32.0	41	41.0	27	27.0	100
Department of Foreign Affairs and Trade	18	18.9	56	58.9	21	22.1	95
Comcare	17	19.8	44	51.2	25	29.1	86
Top 20	11,965	60.0	6245	31.3	1744	8.7	19,954
Remaining Agencies	494	27.3	750	41.4	566	31.3	1810
Total	12,459	33.4	6995	41.9	2310	24.7	21,764

Use of exemptions and practical refusal

Table 9.5 shows how Australian Government agencies and ministers claimed exemptions under the FOI Act when processing FOI requests in 2012–13. More than one exemption might be applied in processing an FOI request.

Table 9.5 Use of exemptions in FOI decisions

FOI Act reference	Exemption	Personal	Other	Total	%
s 33	Documents affecting national security, defence or international relations	133	124	257	1.2
s 34	Cabinet documents	1	75	76	0.3
s 37	Documents affecting enforcement of law and protection of public safety	1108	174	1282	5.9
s 38	Documents to which secrecy provisions of enactments apply	339	360	699	3.2
s 42	Documents subject to legal professional privilege	169	135	304	1.4
s 45	Documents containing material obtained in confidence	110	138	248	1.1
s 46	Documents disclosure of which would be contempt of Parliament or contempt of court	11	13	24	0.1
s 47	Documents disclosing trade secrets or commercially valuable information	17	124	141	0.6
s 47A	Electoral rolls and related documents	2	0	2	0.0
s 47B	Commonwealth-State relations	132	51	183	0.8
s 47C	Deliberative processes	125	238	363	1.7
s 47D	Financial or property interests of the Commonwealth	5	11	16	0.1
s 47E	Certain operations of agencies	490	406	896	4.1
s 47F	Personal privacy	3653	836	4489	20.6
s 47G	Business	208	305	513	2.4
s 47H	Research	1	1	2	0.0
s 47J	The economy	0	3	3	0.0

In 9726 requests (44.7%), no exemption was claimed by the agency or minister. This is a smaller proportion of requests than in 2011–12 (57.8%). This increase in the proportion of cases in which an exemption has been claimed may reflect the increase in the proportion of non-personal requests in 2012–13.

The personal privacy exemption in s 47F of the FOI Act remains the most-claimed exemption, being claimed in 20.6% of FOI requests. The next most-claimed exemptions were s 37 (documents affecting enforcement of law and protection of public safety — 5.9%), s 47E (certain operations of agencies — 4.1%) and s 38 (documents to which secrecy provisions of enactments apply — 3.2%).

Section 24AB of the FOI Act sets out a ‘request consultation process’ which must be undertaken if a ‘practical refusal reason’ exists (s 24AA). A practical refusal reason exists if the work involved in processing the FOI request would substantially and unreasonably divert the agency’s resources from its other operations, or the FOI request does not adequately identify the documents sought.

The request consultation process involves the agency sending a written notice to the FOI applicant advising them that it intends to refuse the request and providing details of how the FOI applicant can consult with the agency. The FOI Act imposes an obligation on the agency to take reasonable steps to help the FOI applicant to revise their request so that the practical refusal reason no longer exists.

Table 9.6 provides information about how Australian Government agencies and ministers engaged in request consultation processes under s 24AB of the FOI Act in 2012–13 and the outcome of those processes.

Table 9.6 Use of practical refusal

Notified in writing of intention to refuse request			Request was subsequently refused or withdrawn				Request was subsequently processed			
Personal	Other	Total	Personal	Other	Total	%	Personal	Other	Total	%
316	466	782	128	206	334	42.7	188	260	448	57.3

Agencies sent almost two-and-a-half times as many notices of an intention to refuse a request in 2012–13 than in 2011–12. However, there was a significant decrease in the proportion of requests subsequently refused or withdrawn: 42.7% in 2012–13; 81.5% in 2011–12. This may indicate that the request consultation process is working better: that agencies are giving applicants sufficient information to refine the scope of their requests or to better identify the documents sought, so that their requests can be processed.

In its *Annual Report 2011–12*, the OAIC noted that only 3.3% of personal information requests were subsequently processed following the request consultation process. An explanation was not apparent, but it may have been that applicants seeking their own records were less inclined to refine their requests. In 2012–13, 59.5% of personal requests were processed following the request consultation process. This is more in line with the pattern for non-personal information requests.

Time taken to respond to FOI requests

As a starting point, once an FOI request has been received, an agency or minister has 30 days within which to make a decision under the FOI Act. The FOI Act allows for the

extension of that statutory timeframe in certain circumstances. If a decision is not made on a request within the statutory timeframe (as extended, if applicable) then s 15AC of the FOI Act provides that a decision refusing access is deemed to have been made. Nonetheless, agencies can — and are encouraged to — continue to process a request that has been deemed to have been refused. If an applicant seeks Information Commissioner review (IC review) of a deemed decision, s 55G provides that the agency can only make a substituted decision that is more favourable to the applicant while that IC review is under way.

An agency may extend the period of time to make a decision by agreement with the applicant (s 15AA), or to undertake consultation with a third party (ss 15(6)–(8)). An agency can also apply to the Information Commissioner for more time to process a request when the request is complex or voluminous (s 15AB), or when access has been deemed to be refused (s 15AC or s 51DA) or affirmed on internal review (s 54D). These extension provisions acknowledge that there are circumstances when it is appropriate for an agency to take more than 30 days to process a request.

When an agency has obtained an extension of time to deal with an FOI request, and resolves the request within the extended time period, the request is recorded as having been determined within the statutory time period.

Table 9.7 shows the response times for all agencies and ministers for 2011–12 and 2012–13. In 2012–13, 85.6% of all FOI requests determined were processed within the applicable statutory time period: 86.3% of all personal information requests and 81.9% of non-personal requests. This is a decrease in response time from 2011–12 (88.5%) but an improvement on the response time in 2010–11 (84.2%).

Table 9.7 Response times — FOI requests

Response time	2011–12			%	2012–13			%
	Personal	Other	Total		Personal	Other	Total	
Within applicable statutory time period	17,015	2660	19,675	88.5	15,441	3181	18,622	85.6
Up to 30 days over applicable statutory time period	964	394	1358	6.1	1807	300	2107	9.7
31–60 days over applicable statutory time period	388	192	580	2.6	293	164	457	2.1
61–90 days over applicable statutory time period	191	156	327	1.5	139	91	230	1.1
More than 90 days over applicable statutory time period	192	105	297	1.3	202	146	348	1.6
Total	18,730	3507	22,237	100.0	17,882	3882	21,764	100.0

Table 9.8 shows those agencies and ministers that, in 2012–13, had one or more FOI requests that took more than 90 days to finalise beyond the applicable statutory time period.

Eight agencies took longer than 90 days after the applicable statutory period had expired to process more than 5% of their FOI requests. While DIAC had the greatest number of applications that took more than 90 days to process, such applications comprised only 2.3% of the total number of FOI requests it determined during 2012–13. The AFP received 23.4% more FOI requests in 2012–13 and determined 39.9% more requests than in 2011–12. However, it experienced a significant increase in the number of requests taking more than 90 days to process (almost two-and-a-half times as many).

Table 9.8 Response times greater than 90 days after the expiry of the applicable statutory period 2012–13

Agency	Total requests determined	Requests determined more than 90 days after statutory period	% of total
Department of Immigration and Citizenship	9178	214	2.3
Australian Federal Police	424	72	17.0
Department of Foreign Affairs and Trade	95	16	16.8
Department of Health and Ageing	179	10	5.6
Australian Taxation Office	765	10	1.3
Department of Human Services	3087	10	0.3
Attorney-General's Department	283	4	1.4
Department of Veterans' Affairs	3744	4	0.1
Department of the Prime Minister and Cabinet	78	2	2.6
National Mental Health Commission	2	1	50.0
Australian Commission for Law Enforcement Integrity	6	1	16.7
Screen Australia	7	1	14.3
Australian Nuclear Science and Technology Organisation	9	1	11.1
Australian Public Service Commission	18	1	5.6
Comcare	86	1	1.2

Applications for amendment of personal records

Section 48 of the FOI Act confers a right on a person to apply to an agency or to a minister to amend a document, to which lawful access has been granted, where the document contains personal information about the applicant:

- that is incomplete, incorrect, out of date or misleading, and
- that has been used, is being used, or is available for use by the agency or Minister for an administrative purpose.

In 2012–13, 2854 amendment applications were received by agencies (none were received by ministers). There has been a decrease in the number of amendment applications received in each of the last four reporting periods: 18.9% in 2012–13, 5.0% in 2011–12, 20.0% in 2010–11, and 26.4% in 2009–10. Only 12 agencies received applications for amendment in 2012–13. One agency, DIAC, received 2799 amendment applications (98.1% of the total).

2893 amendment applications were determined in 2012–13. This is 671 fewer than in 2011–12, a decrease of 9.2%. Table 9.9 compares the decision making for amendment applications for the last three reporting periods. In 2012–13, a decision to amend or annotate a person's personal record was made in response to 72.9% of applications, almost the same proportion as in 2011–12 (73.0%), but slightly smaller than in 2010–11 (77.4%).

Table 9.9 Determination of amendment applications

Decision	2010–11	%	2011–12	%	2012–13	%
Requests granted: amend record	2367	64.1	1884	52.9	1873	64.7
Requests granted: annotate record	487	13.2	717	20.1	236	8.2
Requests granted: amend and annotate record	2	0.1	2	0.0	1	0.0
Requests refused	836	22.6	961	27.0	783	27.1
Total decided	3692	100.0	3564	100.0	2893	100.0

Time taken to respond to amendment applications

An agency is required to notify an applicant of a decision on their application to amend personal records as soon as practicable, but in any case not later than 30 days after the date the request is received, or a longer period as extended under the FOI Act.

In 2012–13, 96.7% of amendment applications were decided within the statutory time period. This is an improvement on 2011–12 (93.2%). All but two of the 95 applications not processed within the statutory time period were applications filed with DIAC.

Charges

Under the *Freedom of Information (Charges) Regulations 1982* (the Charges Regulations), FOI charges apply only to an initial access decision under Part III of the FOI Act. There is no charge for making an application:

- for access to a document under s 15
- for amendment or annotation of a personal record under s 48
- for internal review of a decision under s 54 or s 54A
- for IC review of a decision under s 54L or s 54M.

A fee is payable for an application to the Administrative Appeals Tribunal (AAT) for review of a decision under Part VIIA.

Section 29 of the FOI Act provides for an agency or Minister to impose charges in respect of FOI requests, and the process by which they are assessed, notified and adjusted. The applicant must be given notice in writing when an agency or minister decides under the Charges Regulations that the applicant is liable to pay a charge. The notice must specify that the applicant is liable to pay a charge, the preliminary assessment of the charge to be paid, the basis of calculation and the applicant's right to contend that the charge has been wrongly assessed or should be reduced or waived.

Charges that agencies can impose for processing FOI requests include charges for search and retrieval time, decision making, retrieving and collating electronic information, preparing transcripts and photocopying. An agency or minister has a discretion to impose or not impose a charge, or impose a charge that is lower than the applicable charge under reg 3 of the Charges Regulations.

The applicant must, within 30 days, or such further period allowed by the agency, agree to pay the charge, dispute the charge, seek a waiver or reduction, or withdraw the FOI request. When an applicant asks that the charge be reduced or not imposed, the agency must consider the applicant's reasons and may decide to reduce the charge or to not impose it.

Table 9.10 shows the amounts collected by the 20 agencies that collected the most in charges under the FOI Act in 2012–13. These top 20 agencies collected 85.6% of all charges collected by Australian Government agencies and ministers under the FOI Act during that period.

Table 9.10 Top 20 agencies by charges collected

Agency	Requests received	Requests where charges notified	Total charges notified	Total charges collected
Australian Pesticides and Veterinary Medicines Authority	150	110	\$32,992	\$27,871
Department of Health and Ageing	276	105	\$113,682	\$27,314
Department of Defence	414	107	\$28,468	\$16,987
Department of Infrastructure and Transport	63	23	\$18,387	\$16,936
Department of Regional Australia, Local Government, Arts and Sport	31	2	\$12,920	\$15,752
Trade Marks Office	332	122	\$21,476	\$12,570
Department of Sustainability, Environment, Water, Populations and Communities	120	64	\$47,109	\$11,781
Australian Fisheries Management Authority	14	6	\$13,366	\$10,862
Department of Agriculture, Fisheries and Forestry	73	27	\$18,612	\$9816
Department of Finance and Deregulation	115	39	\$14,047	\$8404
Department of Education, Employment and Workplace Relations	329	70	\$19,743	\$6518
Grains Research and Development Corporation	2	1	\$6395	\$6395
Australian Taxation Office	877	59	\$12,320	\$5638
Australian Competition and Consumer Commission	87	35	\$17,448	\$4329
Department of Veterans' Affairs	4245	67	\$11,603	\$4284
Australian Securities and Investments Commission	251	31	\$13,009	\$4120
Department of the Treasury	138	58	\$23,070	\$4102
Australian Skills Quality Authority	37	15	\$11,645	\$3877
Bureau of Meteorology	21	8	\$3400	\$2742
Department of Immigration and Citizenship	9399	34	\$4859	\$2271
Top 20	16,974	983	\$444,551	\$202,569
Remaining agencies	7970	313	\$259,204	\$34,185
Total	24,944	1296	\$703,755	\$236,754

In 2012–13, agencies notified a total of \$703,755 in charges, with respect to 1296 requests, but collected only \$236,754 (33.6%) of those charges. This difference is due to agencies exercising their discretion under s 29 of the FOI Act not to impose the whole charge, or applicants deciding to withdraw an application and not pay the notified charge.

Agencies notified and collected significantly less in charges in 2012–13 than in the previous year. In 2011–12, agencies notified a total of \$1,537,871 in charges, with respect to 1423 requests, and collected \$421,298. The percentage reduction in the notification and collection amounts for 2012–13 were, respectively, 45.8% and 56.2%

Charges collected, as a proportion of the total cost of administering the FOI Act, continue to decrease. In 2012–13, charges collected represented 0.5% of the total cost of administering the Act. In 2011–12, 1.0%; in 2010–11,² 1.7%; and in 2009–10, 1.9%. (See below for details of the cost of administering the FOI Act.)

Review of FOI decisions

Under the FOI Act, an applicant who is dissatisfied with the decision of a minister or an agency on their initial FOI request has several avenues for review or redress. The applicant can first seek internal review, then external merits review by the Information Commissioner (IC review), then review by the AAT, then appeal, on a question of law, to the Federal Court or the High Court. In addition, an applicant may make a complaint at any time to the Information Commissioner about an agency's actions under the FOI Act.

Third parties that have been consulted in the FOI process also have review rights if an agency decides to release documents contrary to their submissions. Consultation requirements apply for state governments (ss 26A and 26AA), the Australian Government in relation to FOI requests made to a Norfolk Island authority (s 26AA), commercial organisations (s 27) and private individuals (s 27A).

Section 23 of the FOI Act provides that decisions on requests made to an agency can be made by the responsible minister or the principal officer of that agency, or by authorised officers of the agency. There is no express power in the FOI Act for a minister to authorise another person to make a decision on an FOI request received by the minister. The Information Commissioner's view is that it is nevertheless open to a minister to authorise members of the minister's staff or of an agency to make such decisions.

Internal review

A person who is dissatisfied with an agency's access refusal or access grant decision can apply either for internal review or IC review of that decision. Internal review is not available if the initial decision maker is the responsible minister or the principal officer of the agency. Although there is no requirement to do so, the Information Commissioner recommends that a person apply for internal review (if available) before applying for IC review.

² In 2010–11 and earlier, fees were collected in addition to charges; both are included in these figures. From 1 November 2010, the FOI Act and the *Freedom of Information (Fees and Charges) Regulations* (now called the *Freedom of Information (Charges) Regulations 1982*) were amended to abolish fees and some charges.

Internal review is a merits review process. The internal review officer can decide all issues raised by an applicant's FOI request, and exercise all the powers available to the original decision maker. The internal review officer may rely on work undertaken by the original decision maker, or may cause the same work to be undertaken again. All the material available to the original decision maker should be available to the internal review officer. The internal review officer may consider additional material and submissions not considered by the original decision maker.

In 2012–13, 511 applications were made for internal review of FOI decisions: 3.0% more than in 2011–12, which was 18.4% more than in 2010–11. Of the 511 applications for internal review, 249 (48.7%) were for review of decisions on requests for personal information and 262 (51.3%) were for review of decisions on other (non-personal) requests.

Agencies made 485 decisions on internal review in 2012–13: 14.7% more than were made in 2011–12. Of these, 233 (48.0%) affirmed the original decision, 57 (11.8%) set aside the original decision and granted access in full, 160 (33.0%) granted access in part, six (1.2%) granted access in another form, 12 (2.5%) resulted in lesser access and nine applications (1.9%) were withdrawn without concession by the agency. Agencies reduced the charges levied as a result of internal review in eight cases (1.6%).

There were 76 applications for internal review of decisions on amendment applications, 11 (12.6%) fewer than in 2011–12. Agencies made 87 of these internal review decisions: in 60 cases (69.0%) the original decision was affirmed; in 27 cases, it was set aside.

Information Commissioner review

Table 9.11 provides a breakdown by agency and minister of IC review applications received in 2012–13, where the agency or minister was the subject of more than one IC review. In total, there were 507 applications for IC review (11.2% more than in 2011–12).

Table 9.11 Information Commissioner review where the agency/minister was the subject of more than one IC review

Agency/minister	Access refusal decisions	Access grant decisions	Total
Department of Human Services	81	0	81
Department of Immigration and Citizenship	75	1	76
Australian Taxation Office	34	1	35
Australian Federal Police	23	0	23
Department of Veterans' Affairs	18	0	18
Department of Defence	16	1	17
Australian Securities and Investments Commission	15	1	16
Department of Foreign Affairs and Trade	15	0	15
Department of the Prime Minister and Cabinet	15	0	15

Agency/minister	Access refusal decisions	Access grant decisions	Total
Department of Health and Ageing	14	0	14
Attorney-General's Department	13	0	13
Australian Customs and Border Protection Service	11	1	12
Australian Prudential Regulation Authority	11	0	11
Department of Finance and Deregulation	9	2	11
Department of Education, Employment and Workplace Relations	7	3	10
Civil Aviation Safety Authority	8	0	8
Department of Agriculture, Fisheries and Forestry	1	7	8
Department of the Treasury	7	0	7
Comcare Australia	7	0	7
Department of Sustainability, Environment, Water, Population and Communities	6	1	7
Commonwealth Ombudsman	6	0	6
Department of Infrastructure and Transport	4	0	4
Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education	4	0	4
NBN Co Ltd	4	0	4
Fair Work Ombudsman	0	4	4
Australian Broadcasting Corporation	4	0	4
Australian Postal Corporation	3	0	3
Australian Communications and Media Authority	3	0	3
Office of the Prime Minister	3	0	3
National Health and Medical Research Council	3	0	3
IP Australia (including Trade Marks Office)	2	1	3
Australian Crime Commission	2	0	2
Airservices Australia	2	0	2
Australian Accounting Standards Board	2	0	2
Australian National Maritime Museum	2	0	2
Australian Nuclear Science and Technology Organisation	2	0	2
The Australian National University	2	0	2

Agency/minister	Access refusal decisions	Access grant decisions	Total
Australian Human Rights Commission	2	0	2
Office of the Commonwealth Director of Public Prosecutions	2	0	2
Australian Agency for International Development	2	0	2
Migration Review Tribunal — Refugee Review Tribunal	2	0	2
Out of Jurisdiction	2	0	2
Subtotal	444	23	467
Remaining agencies/ministers	39	1	40
Total	483	24	507

Generally speaking, the agencies about which the most IC review applications were made were those that received the largest number of FOI requests in 2012–13. Twenty or more IC review applications were made about each of four agencies: DHS, DIAC, the ATO and the AFP. Each of those agencies is in the top 10 agencies in terms of FOI requests received.

There are only two agencies in the top 20 agencies in terms of FOI requests received about which no IC review applications were received in 2012–13: ComSuper and APVMA.

Agencies that did not receive large numbers of applications, but about which the OAIC received a comparatively large number of IC review applications in 2012–13, include the Australian Accounting Standards Board (2 requests, 2 IC reviews), the Australian National Maritime Museum (2 requests, 2 IC reviews), the Australian Prudential Regulation Authority (50 requests, 11 IC reviews), Australian Communications and Media Authority (14 requests, 3 IC reviews), the Office of the Prime Minister (16 requests, 3 IC reviews), the Australian Nuclear Science and Technology Organisation (12 requests, 2 IC reviews), the National Health and Medical Research Council (18 requests, 3 IC reviews), PM&C (121 requests, 15 IC reviews), the Department of Agriculture Forestry and Fisheries (73 requests, 8 IC reviews) and NBN Co (37 requests, 4 IC reviews).

Information about the Information Commissioner's handling of IC reviews is given in Chapter 8.

Administrative Appeals Tribunal review

An application can be made to the AAT for review of the following FOI decisions:

- a decision of the Information Commissioner on an IC review
- an IC reviewable decision (that is, an original decision or an internal review decision), but only if the Information Commissioner decides, under s 54W(b), that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT.

An application for the review of one of these decisions may be made by a person whose interests are affected by the decision.³ As with IC review, the AAT conducts a merits review process.

The AAT's decisions are appealable to the Federal Court of Australia, but only on a question of law. The fee for an application to the AAT increases on each biennial anniversary of 1 July 1996, based on a calculation related to the Consumer Price Index. The fee during the reporting period was \$816.

In 2012–13, 25 of the 44 reviews finalised by the AAT involved review of FOI requests made prior to 1 November 2010, for which IC review was not available. Of the remaining 19 matters finalised by the AAT, six were applications for review of decisions made by the Information Commissioner or the FOI Commissioner and 13 were matters that the Information Commissioner had declined to review under s 54W(b).

Chart 9.1 shows the number of applications for review of FOI decisions received by the AAT since 1983–84.

Chart 9.1 shows that 42 FOI decisions were appealed to the AAT in 2012–13. This number has more than doubled since 2011–12, when 20 decisions were appealed to the AAT. The low number of appeals in 2011–12 was due to that year being a 'transition year', during which all external merits review of decisions made on FOI requests lay first with the Information Commissioner. Before November 2010, external merits review lay with the AAT alone.

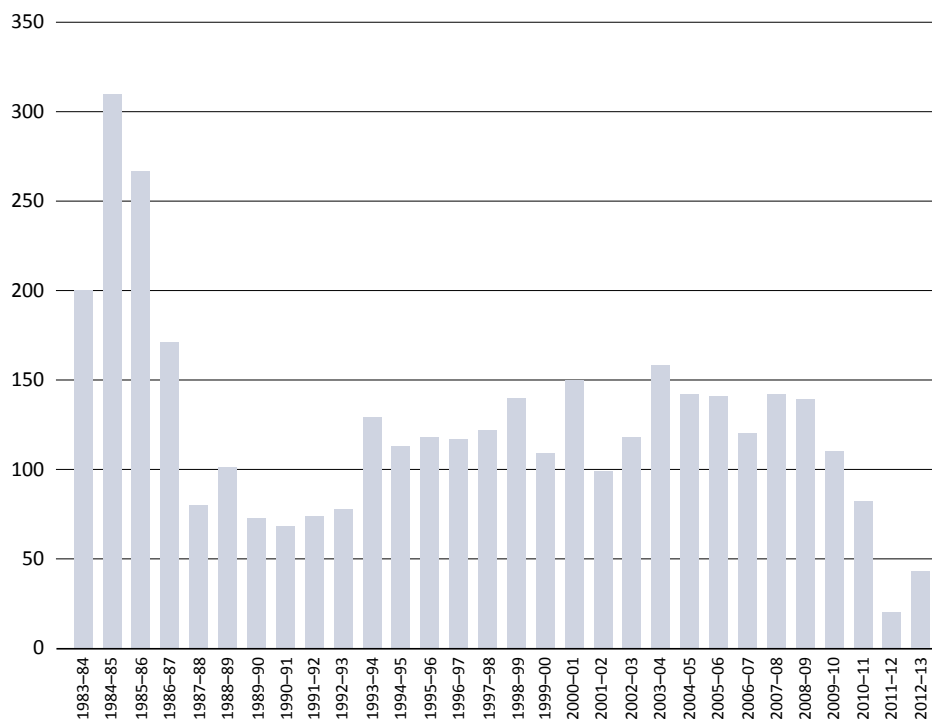
Chart 9.1 Applications for review of FOI decisions received by the AAT since 1983–84

Table 9.12 provides a breakdown by agency of applications to the AAT in FOI matters in 2012–13. This data has been provided by the AAT.

Table 9.12 AAT review by agency

Agency	Applications	% of total applications
Australian Taxation Office	24	57.1
Department of Immigration and Citizenship	4	9.5
Department of Infrastructure and Transport	4	9.5
Australian Federal Police	3	7.1
Department of Agriculture, Fisheries and Forestry	2	4.8
Department of Human Services	2	4.8
Australian Curriculum, Assessment and Reporting Authority	1	2.4
Australian Competition and Consumer Commission	1	2.4
Office of the Australian Information Commissioner	1	2.4
Total	42	100.0

Table 9.13 shows the outcome of the 44 FOI appeals finalised by the AAT in 2012–13. This data has been provided by the AAT.

Table 9.13 Outcomes of FOI appeals finalised by the AAT in 2012–13

By consent/ withdrawn	Number	By decision	Number	Other	Number
Affirmed	0	Affirmed	4	Dismissed by AAT	0
Set aside	3	Set Aside	4	No application fee paid	2
Varied	0	Varied	4	Extension of time refused	0
Dismissed	1				
Withdrawn	26				

Of the 44 FOI appeals finalised by the AAT, 12 (27.3%) resulted in a decision. The AAT affirmed the agency's decision in four (33.3%) of those reviews, compared with 47.8% in 2011–12.

Two of the FOI appeals decided by the AAT in 2012–13 were appeals from IC review decisions. On 21 December 2012, in *Australian Broadcasting Corporation and Herald and Weekly Times Pty Ltd* [2012] AATA 914, the AAT affirmed the FOI Commissioner's decision in *Herald and Weekly Times Pty Ltd and Australian Broadcasting Corporation* [2012] AICmr 7. On the same day, in *Australian Broadcasting Corporation and Tennant* [2012] AATA 914, the AAT set aside part of the FOI Commissioner's decision in '*F*' and *Australian Broadcasting Corporation* [2012] AICmr 8, substituting its own decision (on an issue that was not raised in the IC review) and affirmed the balance of the IC review decision.

Federal Court of Australia appeals

On 19 December 2012, in *Kline v Official Secretary to the Governor-General* [2012] FCAFC 184, the Full Court of the Federal Court dismissed an appeal from the AAT's decision in *Kline and Official Secretary to the Governor-General* [2012] AATA 247, which had affirmed the FOI Commissioner's decision in '*B*' and *Office of the Official Secretary to the Governor-General* [2011] AICmr 6.

Complaints about agency FOI actions

Complaints to the Information Commissioner

Information about the Information Commissioner's handling of FOI complaints is given in Chapter 8.

Complaints to the Commonwealth Ombudsman

Complaints about agencies' handling of FOI requests are primarily dealt with by the OAIC. The Commonwealth Ombudsman may investigate FOI complaints when it would be more appropriate or effective: for example, when the FOI complaint is one part of a wider grievance about an agency's actions.

In 2012–13, the Commonwealth Ombudsman received 55 complaints about FOI matters, 22.2% more than the 45 it received in the previous year. The Commonwealth Ombudsman transferred nine complaints to the OAIC under s 6C of the *Ombudsman Act 1976* during 2012–13. The Ombudsman did not investigate any FOI complaints in 2012–13.

Impact of FOI on agency resources

To assess the impact on agency resources of their compliance with the FOI Act, agencies are required to estimate the hours that staff spent on FOI matters and the non-labour costs directly attributable to FOI, such as training and legal costs. Agencies submit these estimates annually. Experience shows that agencies rarely keep exact records of hours spent by officers on FOI matters and other non-labour costs incurred. Agency estimates may also include FOI processing work undertaken on behalf of a minister’s office.

For the second year, agencies have also reported on their costs of compliance with the IPS. To facilitate comparison with the information in previous annual reports, those IPS costs are not included in this analysis of the cost of agency compliance with the FOI Act, but are discussed separately below.

The total reported cost attributable to the FOI Act in 2012–13 was \$45.231 million, an increase of 8.4% on the previous year’s total of \$41.719 million. This increase occurred despite an increase of only 0.7% in the number of FOI requests received, and a decrease of 18.9% in the number of amendment applications received. Total yearly FOI costs since the commencement of the FOI Act are shown in Table 9.14.⁴

Table 9.14 Comparative total yearly cost of FOI

Year	Total cost	Year	Total cost	Year	Total cost
1982–83*	\$7,502,355	1993–94	\$13,977,360	2004–05	\$22,860,022
1983–84	\$15,106,511	1994–95	\$11,955,482	2005–06	\$24,903,771
1984–85	\$16,496,961	1995–96	\$14,564,562	2006–07	\$24,936,178
1985–86	\$15,711,889	1996–97	\$15,972,950	2007–08	\$29,474,653
1986–87	\$13,336,864	1997–98	\$12,191,478	2008–09	\$30,358,484
1987–88	\$11,506,931	1998–99	\$13,066,029	2009–10	\$27,484,129
1988–89	\$10,494,376	1999–00	\$14,035,394	2010–11	\$36,318,030
1989–90	\$10,373,321	2000–01	\$14,415,406	2011–12	\$41,718,803
1990–91	\$9,921,772	2001–02	\$17,387,088	2012–13	\$45,231,147
1991–92	\$12,723,097	2002–03	\$18,398,181		
1992–93	\$12,702,329	2003–04	\$20,189,136		

* Seven months only.

4 Before 2006–07, salary costs were calculated using the average of the salary levels of the three agencies recording the highest total FOI costs. Since 2006–07, salary costs have been calculated using median APS base salary figures and have taken account of SES salary costs. This means the data before 2006–07 is not strictly comparable with the data collected since 2006–07.

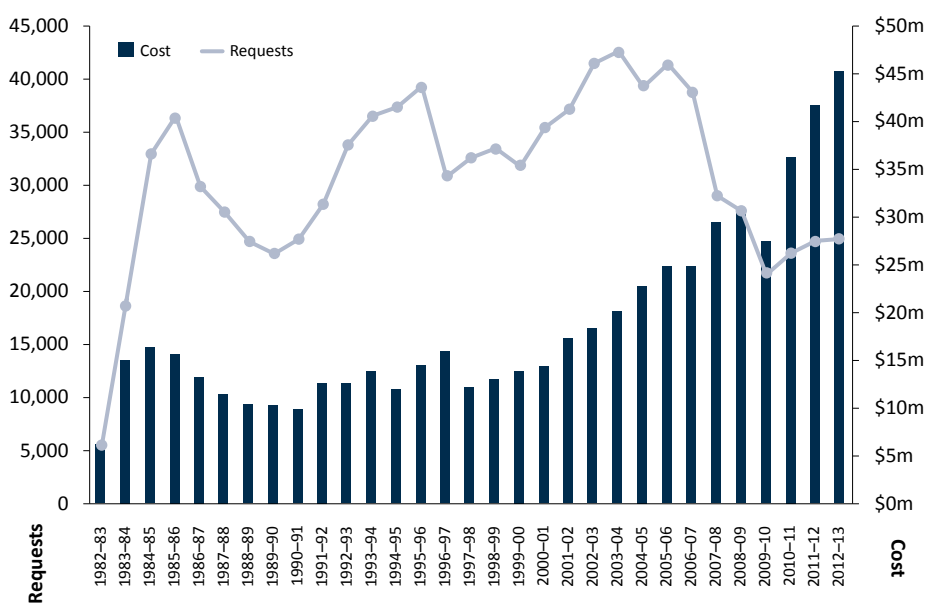
Table 9.15 sets out the average cost per FOI request determined (granted in full, in part or refused) from 2000–01 to 2012–13. The average cost per request determined in 2012–13 was \$2078, 10.8% more than in the previous year.

Table 9.15 Average cost per request

Year	Requests determined	Total cost	Average cost per request determined
2002–03	38,370	\$18,398,181	\$479
2003–04	39,774	\$20,189,136	\$508
2004–05	36,827	\$22,860,022	\$621
2005–06	38,987	\$24,903,771	\$639
2006–07	34,158	\$24,936,178	\$730
2007–08	31,367	\$29,474,653	\$940
2008–09	25,139	\$30,358,484	\$1208
2009–10	19,583	\$27,484,129	\$1403
2010–11	20,187	\$36,318,030	\$1799
2011–12	22,237	\$41,718,803	\$1876
2012–13	21,764	\$45,231,147	\$2078

Chart 9.2 shows the relationship between FOI costs and the number of FOI requests received for each year since 1982–83. Between 1 December 1982 (the date the FOI Act commenced) and 30 June 2013, Australian Government agencies and ministers have received 956,347 FOI requests.

Chart 9.2 FOI costs in relation to number of requests received



Staff costs

All agencies are required to supply information about staff resources allocated to FOI. This information includes:

- the number of staff who spent 75% or more of their time on FOI work
- the number of staff who spent less than 75% of their time on such work.

This covers all facets of agencies' processing FOI requests, including:

- search and retrieval
- consultation with third parties
- decision making
- internal review
- FOI processing work for a minister's office.

Totals of FOI staffing across all Australian Government agencies for 2010–11, 2011–12 and 2012–13 are shown in Table 9.16.

Table 9.16 Total FOI staffing for 2010–11, 2011–12 and 2012–13

Staffing	2010–11	2011–12	2012–13
Staff numbers: 75–100% time spent on FOI matters	213*	249	284
Staff numbers: less than 75% time spent on FOI matters	2431*	3722	3546
Total staff hours	511,986	576,824	638,466
Total staff years	256.0	288.4	319.2

* Staff numbers for 2010–11 are a weighted average of numbers for the period before the commencement of the FOI reforms (1 July 2010 to 31 October 2010) and for the period afterwards (1 November 2010 to 30 June 2011).

Agencies provided estimates of the number of staff hours spent on FOI to enable calculation of salary costs (and 60% related costs) directly attributable to FOI. A summary of staff costs is provided in Table 9.17, based on information provided by agencies and the following median base annual salaries:⁵

- officers whose duties included FOI work \$ 72,487⁶
- other officers involved in processing requests
 - Senior Executive Service (SES) officers (or equivalent) \$172,000⁷
 - APS Level 6 and Executive Levels (EL) 1–2 \$104,825⁸
 - Australian Public Service (APS) Levels 1–5 \$ 59,677⁹

5 As salary levels differ between agencies, median salary levels were used. These are given by the Australian Public Service Commission in its *APS Remuneration Report 2012*. These median levels are as at 31 December 2012.

6 APS Level 5 base salary median.

7 SES Band 1 base salary median.

8 Executive Level 1 base salary median.

9 APS Level 3 base salary median.

- Minister's office
 - Minister and advisers \$130,460¹⁰
 - Minister's support staff \$ 59,677¹¹

Table 9.17 Estimated staff costs of FOI for 2012–13

Type of staff	Staff years	Salary costs	Related costs (60%)	Total staff costs
Officers whose duties included FOI work	250.0	\$18,123,163	\$10,873,898	\$28,997,062
Other officers involved in processing requests:				
SES	6.8	\$1,165,472	\$699,283	\$1,864,755
APS Level 6 and Executive Levels 1–2	39.3	\$4,115,167	\$2,469,100	\$6,584,268
APS Levels 1–5	22.6	\$1,349,566	\$809,739	\$2,159,305
Ministerial staff:				
Minister and advisers	0.5	\$65,100	\$39,060	\$104,159
Minister's support staff	0.1	\$3969	\$2381	\$6350
Total	319.2	\$24,822,437	\$14,893,462	\$39,715,898

Total estimated staff costs in 2012–13 were \$39.716 million, 17.3% more than in the previous year.

Non-labour costs

Non-labour costs directly attributable to FOI are summarised in Table 9.18. The total in 2012–13 was \$5.515 million, 29.9% less than in the previous year.

The largest decreases were in legal costs, which may indicate that agencies are increasingly undertaking legal work in-house. Training costs decreased by 23.8% in 2012–13. This was presumably due to a reduction in the need to train staff on the effect of the 2010 reforms.

¹⁰ Executive Level 2 base salary median.

¹¹ APS Level 3 base salary median.

Table 9.18 Identified non-labour costs of FOI

Costs	2010–11	2011–12	% change	2012–13	% change
General legal advice costs	n/a	\$5,323,951	n/a	\$3,116,080	-41.5%
Litigation costs	n/a	\$1,229,393	n/a	\$727,879	-40.8%
Total general legal costs	\$4,991,656	\$6,553,344	31.3%	\$3,843,959	-41.3%
General administrative costs	\$700,565	\$600,310	-14.3%	\$1,100,960	83.4%
Training	\$388,207	\$398,373	2.6%	\$303,437	-23.8%
Other	\$282,897	\$312,270	10.4%	\$266,893	-14.5%
Total	\$6,363,324	\$7,864,297	23.6%	\$5,515,249	-29.9%

Average cost per FOI request

The average staff-days per request ranged across agencies from 0.1 to 57.7 days in 2012–13. The overall average was 3.4 days. The average was 3.1 days in 2011–12 and 2.9 in 2010–11. The average cost per request ranged across agencies from \$29 to \$27,933. The overall average was \$1814, an increase of 7.7% on the previous year's average of \$1685.

Table 9.19 lists the agencies/ministers that recorded an average cost of less than \$200 per request received in 2012–13.

Table 9.19 Agencies/ministers with average cost per request less than \$200

Agency	Requests received	Average cost per request
Federal Circuit Court of Australia	2	\$29
Aboriginal Hostels Limited	2	\$58
Minister for Sustainability, Environment, Water, Population and Communities	5	\$63
Australian Accounting Standards Board	2	\$71
Minister for Foreign Affairs	2	\$76
Migration Review Tribunal	554	\$82
National Industrial Chemicals Notification and Assessment Scheme	2	\$98
Refugee Review Tribunal	364	\$118
Remuneration Tribunal	1	\$132
Parliamentary Secretary for Climate Change and Energy Efficiency	1	\$163
Screen Australia	7	\$168
Veterans' Review Board	5	\$179
Australian War Memorial	2	\$182
Seafarers Safety, Rehabilitation and Compensation Authority	2	\$188

Table 9.20 lists the agencies that recorded an average cost of more than \$10,000 per request received in 2012–13.

Table 9.20 Agencies with average cost per request greater than \$10,000

Agency	Requests received	Average cost per request
Geoscience Australia	1	\$27,833
Grains Research and Development Corporation	2	\$22,153
National Offshore Petroleum Safety & Environmental Management Authority	2	\$21,930
Australian Fisheries Management Authority	14	\$16,604
Department of Resources, Energy and Tourism	27	\$16,022
Australian Communications and Media Authority	14	\$14,625
Indigenous Land Corporation	2	\$13,638
Tax Practitioners Board	15	\$13,552
Australian Film, Television and Radio School	1	\$13,370
Department of Broadband, Communications and the Digital Economy	44	\$13,361
Australian Curriculum, Assessment and Reporting Authority	6	\$12,319
Private Health Insurance Ombudsman	1	\$10,836
Food Standards Australia New Zealand	10	\$10,549
Department of the Prime Minister and Cabinet	121	\$10,141

The range of averages in Table 9.20 is much less than in 2011–12 when the average cost per request over \$10,000 ranged from \$14,573 to \$94,212. This may indicate that agencies are less often seeking external legal advice with respect to requests, reflecting an increasing understanding of, and confidence with, the FOI Act.

Impact of Information Publication Scheme on agency resources

The previous reporting period was the first for which agencies were required to provide information about the costs of meeting their obligations under the IPS, which commenced on 1 May 2011. Further information about the IPS is given in Chapter 8.

The total reported cost attributable to compliance with the IPS in 2012–13 was \$3.108 million, 22.2% less than in 2011–12 (\$3.798 million). A decrease was to be expected as most agencies were establishing their IPS compliance mechanisms during last year. Some agencies did not report any cost of their IPS compliance separately from their costs of complying with the FOI Act. This may be because those agencies were unable to disaggregate those costs.

Staff costs

Table 9.21 shows the total reported IPS staffing across Australian Government agencies in 2011–12 and 2012–13.

Table 9.21 Total IPS staffing

Staffing	2011–12	2012–13	% change
Staff numbers: 75–100% time on IPS matters	21	20	-4.8%
Staff numbers: less than 75% time on IPS matters	691	529	-23.4%
Total staff hours	54,101	46,959	-13.2%
Total staff years	27.1	23.5	-13.2%

Table 9.22 details the estimated staff costs of IPS for 2012–13.

Table 9.22 Estimated staff costs of IPS for 2012–13

Type of staff	Staff years	Salary costs	Related costs (60%)	Total staff costs
Officers whose duties included IPS work	13.8	\$1,001,625	\$600,975	\$1,602,600
Other officers involved in IPS work:				
SES	0.5	\$84,882	\$50,929	\$135,811
APS Level 6 and Executive Levels 1–2	5.2	\$552,113	\$331,268	\$883,381
APS Levels 1–5	4	\$232,800	\$139,680	\$372,480
Total	23.5	\$1,871,420	\$1,122,852	\$2,994,272

Non-labour costs

Table 9.23 details the identified non-labour costs of the IPS in 2011–12 and 2012–13.

Table 9.23 Identified non-labour costs of IPS

Item	2011–12	2012–13	% change
General administrative costs	\$17,808	\$24,383	36.9%
General legal advice costs	\$24,603	\$31,502	28.0%
Training	\$6068	\$500	-91.8%
Other	\$170,516	\$57,300	-66.4%
Total	\$218,995	\$113,685	-48.1%

There has been a significant reduction in ‘other’ non-labour costs associated with the IPS in 2012–13. As noted above, a decrease was to be expected as most agencies were establishing their IPS compliance mechanisms during 2011–12.

OAIC expenditure on FOI functions

The OAIC has three key functions: information policy, privacy and FOI functions. Although some staff of the OAIC work in only one of these three areas, many work across two or all three functions. It is difficult to precisely identify the proportion of the OAIC’s activities, and its resources, that are directed towards each function.

The OAIC estimates that 35% of its resources are directed towards exercising its FOI functions. The OAIC’s total expenditure for the reporting period was \$14.363 million (see Appendix 1). Accordingly, the OAIC estimates that it spent approximately \$5.027 million on the exercise of its FOI functions in 2012–13. This is 9.2% more than the approximately \$4.604 million it spent in 2011–12.

The OAIC spent \$47,109 on processing FOI requests made to the OAIC in 2012–13, almost four times the \$11,807 it spent in 2011–12.

Appendices

Appendix 1 — Agency resource statement and resources for outcomes

Table A1.1 Office of the Australian Information Commissioner resource statement 2012–13

		Actual available appropriation for 2012–13 \$'000	Payments made 2012–13 \$'000	Balance remaining 2012–13 \$'000
		(a)	(b)	(a) – (b)
Ordinary Annual Services ¹				
Departmental appropriation ²		17,680	15,168	2,512
Total		17,680	15,168	2,512
Total ordinary annual services	A	17,680*	15,168	
Other Services				
Departmental non-operating				
Equity injections		0	0	0
Total		0	0	0
Total other services	B	0	0	
Total Available Annual				
Appropriations and payments		17,680	15,168	
Total special appropriations	C	0	0	0
Total special accounts	D	0	0	0
Total resourcing and payments A+B+C+D		17,680	15,168	
Total net resourcing and payments for Office of the Australian Information Commissioner		17,680	15,168	

* Full year budget, including any subsequent adjustment made to the 2012–13 Budget.

1. Appropriation Bill (No.1) 2012–13. Includes Prior Year departmental appropriation and S.31 relevant agency receipts.
2. Includes an amount of \$0.20m in 2012–13 for the Departmental Capital Budget. For accounting purposes this amount has been designated as 'contributions by owners'.

Table A1.2 Expenses and Resources for Outcome 1

Expenses for Outcome 1			
Outcome 1: Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of information commissioner, freedom of information and privacy functions			
	Budget*	Actual	Variation
	2012–13	2012–13	2012–13
	\$'000	\$'000	\$'000
	(a)	(b)	(a) – (b)
Program 1.1: Complaint handling, compliance and monitoring, and education and promotion			
Departmental expenses			
Departmental appropriation ¹	13,414	13,275	139
Expenses not requiring appropriation in the Budget year	942	1,088	(146)
Total for Program 1.1	14,356	14,363	(7)
Outcome 1 Totals by appropriation type			
Departmental expenses			
Departmental appropriation ¹	13,414	13,275	139
Expenses not requiring appropriation in the Budget year	942	1,088	(146)
Total expenses for Outcome 1	14,356	14,363	(7)
	2011–12	2012–13	
Average Staffing Level (number)	80	85	

* Full year budget, including any subsequent adjustment made to the 2012–13 Budget.

1. Departmental Appropriation combines 'Ordinary annual services (Appropriation Bill No. 1)' and 'Revenue from independent sources (s 31)'.



Appendix 2 — Financial statements 2012–13

Financial statements — contents

Independent Auditor Report
Statement by the Chief Executive and Chief Finance Officer
Statement of Comprehensive Income
Balance Sheet
Statement of Changes in Equity
Cash Flow Statement
Schedule of Commitments
Schedule of Contingencies

Notes to and forming part of the financial statements

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Note 11: Contingent Assets and Liabilities
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Note 20: Compliance with Statutory Conditions for Payments from the Consolidated Revenue Fund



INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

I have audited the accompanying financial statements of the Office of the Australian Information Commissioner for the year ended 30 June 2013, which comprise: a Statement by the Chief Executive and Chief Finance Officer; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; and Notes to and forming part of the financial statements, including a Summary of Significant Accounting Policies.

Chief Executive's Responsibility for the Financial Statements

The Chief Executive of the Office of the Australian Information Commissioner is responsible for the preparation of financial statements that give a true and fair view in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards, and for such internal control as is necessary to enable the preparation of the financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Office of the Australian Information Commissioner's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office of the Australian Information Commissioner's internal control. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Chief Executive of the Office of the Australian Information Commissioner, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Independence

In conducting my audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

Opinion

In my opinion, the financial statements of the Office of the Australian Information Commissioner:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Office of the Australian Information Commissioner's financial position as at 30 June 2013 and of its financial performance and cash flows for the year then ended.

Australian National Audit Office



Ron Walsh
Audit Principal

Delegate of the Auditor-General

Canberra
4 September 2013

Office of the Australian Information Commissioner

FINANCIAL STATEMENTS

for the period ended 30 June 2013

STATEMENT BY THE CHIEF EXECUTIVE AND CHIEF FINANCE OFFICER

In our opinion, the attached financial statements for the period ended 30 June 2013 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the Financial Management and Accountability Act 1997, as amended.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Office of the Australian Information Commissioner will be able to pay its ARCBs as and when they become due and payable.


Professor John McMillen
Australian Information Commissioner

5 September 2013


Alison Leonard
Chief Finance Officer

5 September 2013

Statement of Comprehensive Income
for the period ended 30 June 2013

	Notes	2013 \$'000	2012 \$'000
EXPENSES			
Employee benefits	3A	9,676	9,169
Supplier	3B	3,631	3,476
Depreciation and amortisation	3C	865	508
Write-down and impairment of assets	3D	191	-
Total expenses		14,363	13,153
LESS:			
OWN-SOURCE INCOME			
Own-source revenue			
Sale of goods and rendering of services	4A	2,933	1,990
Total own-source revenue		2,933	1,990
Gains			
Sale of assets	4B	1	-
Other gains	4C	32	32
Total gains		33	32
Total own-source income		2,966	2,022
Net cost of services		(11,397)	(11,131)
Revenue from Government	4D	10,764	11,020
Deficit attributable to the Australian Government		(633)	(111)
OTHER COMPREHENSIVE INCOME			
Items not subject to subsequent reclassification to profit or loss			
Changes in asset revaluation surplus		55	-
Total other comprehensive income after income tax		55	-
Total comprehensive loss attributable to the Australian Government		(578)	(111)

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

Balance Sheet
as at 30 June 2013

	Notes	2013 \$'000	2012 \$'000
ASSETS			
Financial Assets			
Cash and cash equivalents	5A	802	664
Trade and other receivables	5B	2,284	3,537
Other financial assets	5C	149	-
Total financial assets		3,235	4,201
Non-Financial Assets			
Infrastructure, plant and equipment	6A,B	3,280	3,613
Intangibles	6C,D	1,935	2,200
Other non-financial assets	6E	88	41
Total non-financial assets		5,303	5,854
Total assets		8,538	10,055
LIABILITIES			
Payables			
Suppliers	7A	681	1,224
Other payables	7B	837	632
Total payables		1,518	1,856
Non-interest Bearing Liabilities			
Lease incentives	8A	1,936	2,189
Total non-interest bearing liabilities		1,936	2,189
Provisions			
Employee provisions	9A	2,272	2,649
Total provisions		2,272	2,649
Total liabilities		5,726	6,693
Net assets		2,812	3,361
EQUITY			
Contributed equity		1,953	1,933
Asset revaluation reserve		55	-
Retained earnings		804	1,428
Total equity		2,812	3,361

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

Statement of Changes in Equity
for the period ended 30 June 2013

	Retained earnings		Asset Revaluation Reserve		Contributed equity		Total equity	
	2013	2012	2013	2012	2013	2012	2013	2012
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Opening balance								
Balance carried forward from previous period	1,428	1,526	-	-	1,933	1,908	3,361	3,434
Adjustment for changes in accounting policies	9	12	-	-	-	-	9	12
Adjusted opening balance	1,437	1,538	-	-	1,933	1,908	3,370	3,446
Comprehensive income								
Other comprehensive income	-	-	55	-	-	-	55	-
Deficit for the period	(633)	(110)	(110)	(633)	-	-	(633)	(110)
Total comprehensive income	(633)	(110)	55	(633)	-	-	(578)	(110)
Transactions with owners								
Contributions by owners	-	-	-	-	20	25	20	25
Departmental capital budget	-	-	-	-	20	25	20	25
Sub-total transactions with owners	804	1,428	55	-	1,953	1,933	2,812	3,361
Closing balance attributable to the Australian Government								

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

Cash Flow Statement*for the period ended 30 June 2013*

	Notes	2013 \$'000	2012 \$'000
OPERATING ACTIVITIES			
Cash received			
Appropriations		10,764	11,020
Cash transferred from the Official Public Account		4,333	1,769
Sales of goods and rendering of services		2,629	2,487
Net GST received		357	235
Total cash received		18,083	15,511
Cash used			
Employees		(10,108)	(8,754)
Suppliers		(4,554)	(3,506)
Section 31 receipts transferred to Official Public Account		(2,949)	(2,914)
Total cash used		(17,611)	(15,174)
Net cash from operating activities	10	472	337
INVESTING ACTIVITIES			
Cash used			
Purchase of infrastructure, plant and equipment		(198)	(1,203)
Purchase of intangibles		(206)	(1,392)
Total cash used		(404)	(2,595)
Net cash used by investing activities		(404)	(2,595)
FINANCING ACTIVITIES			
Cash received			
Contributed equity		70	2,160
Total cash received		70	2,160
Net increase (decrease) in cash held		138	(98)
Cash and cash equivalents at the beginning of the reporting period		664	762
Cash and cash equivalents at the end of the reporting period	5A	802	664

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

Schedule of Commitments

as at 30 June 2013

	2013 \$'000	2012 \$'000
BY TYPE		
Commitments receivable		
Other commitments	(3,543)	(121)
Net GST recoverable on commitments	(1,080)	(1,144)
Total commitments receivable	(4,623)	(1,265)
Commitments payable		
Other commitments		
Operating leases ¹	14,101	10,265
Other	1,319	2,441
Total other commitments	15,420	12,706
Total commitments payable	15,420	12,706
Net commitments by type	10,797	11,441
BY MATURITY		
Commitments receivable		
Operating lease income		
One year or less	(3,462)	(327)
From one to five years	(650)	(598)
Over five years	(511)	(340)
Total operating lease income	(4,623)	(1,265)
Commitments payable		
Operating lease commitments		
One year or less	1,328	1,057
From one to five years	7,148	5,470
Over five years	5,625	3,738
Total operating lease commitments	14,101	10,265
Other Commitments		
One year or less	1,319	1,334
From one to five years	-	1,107
Total other commitments	1,319	2,441
Total commitments payable	15,420	12,706
Net commitments by maturity	10,797	11,441

Note: Commitments are GST inclusive where relevant

Nature of Leases/General Description

1. Operating leases included are effectively non-cancellable and comprise:

Leases for office accommodation

Lease payments are subject to fixed annual rental increases. The initial periods of accommodation are still current and there are two options in the lease agreement to renew.

Agreements for the provision of motor vehicles to senior executive officers

No contingent rentals exist and there are no renewal or purchase options available to the OAIC.

Lease agreement in relation to the provision of desktop computer equipment and printers

The lessor provides all desktop computer equipment and software. The lease agreement allows for variations to the duration of the rental period and to the equipment being provided.

Other commitments

Consists of agreements with other entities for the provision of goods and services, outgoings and agreements equally proportionately unperformed.

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

Schedule of Contingencies*as at 30 June 2013*

	2013	2012
	\$'000	\$'000
Contingent assets	-	-
Total contingent assets	-	-
Contingent liabilities	-	-
Total contingent liabilities	-	-
Net contingent liabilities	-	-

Details of each class of contingent liabilities and contingent assets listed above are disclosed in Note 11, along with information on significant remote contingencies and contingencies that cannot be quantified.

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

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
for the period ended 30 June 2013

Note 1: Summary of Significant Accounting Policies

1.1 Objectives of the Office of the Australian Information Commissioner

The Office of the Australian Information Commissioner (OAIC) is an Australian Government controlled entity. The OAIC is a not-for-profit entity and is structured to meet the following outcome:

"Provision of public access to Commonwealth Government information, protection of individuals' personal information, and performance of information commissioner, freedom of information and privacy functions."

The continued existence of the OAIC in its present form and with its present programs is dependent on Government policy and on continuing appropriations by Parliament for the OAIC's administration and programs (refer to Note 2).

OAIC activities contributing toward this outcome is classified as departmental. Departmental activities involve the use of assets, liabilities, income and expenses controlled or incurred by the OAIC in its own right.

The OAIC has no administered activities.

1.2 Basis of Preparation of the Financial Statements

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997* and are general purpose financial statements.

The Financial Statements have been prepared in accordance with:

- Finance Minister's Orders (or FMO) for reporting periods ending on or after 1 July 2011; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial statements are presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

Unless an alternative treatment is specifically required by an accounting standard or the FMOs, assets and liabilities are recognised in the balance sheet when and only when it is probable that future economic benefits will flow to the entity or a future sacrifice of economic benefits will be required and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under executory contracts are not recognised unless required by an accounting standard. Liabilities and assets that are unrecognised are reported in the schedule of commitments or the schedule of contingencies.

Unless alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the statement of comprehensive income when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

The Australian Government continues to have regard to developments in case law, including the High Court's most recent decision on Commonwealth expenditure in *Williams v Commonwealth* (2012) 288 ALR 410, as they contribute to the larger body of law relevant to the development of Commonwealth programs. In accordance with its general practice, the Government will continue to monitor and assess risk and decide on any appropriate actions to respond to risks of expenditure not being consistent with constitutional or other legal requirements.

1.3 Significant Accounting Judgements and Estimates

No significant accounting assumptions or estimates have been identified that have a significant risk of causing a material misstatement to the financial statements.

1.4 New Australian Accounting Standards

Adoption of New Australian Accounting Standard Requirements

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

No new accounting standards (including reissued standards), amendments to standards or interpretations issued by the Australian Accounting Standards Board that are applicable to the current period have had a material financial impact on the OAIC.

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
for the period ended 30 June 2013

Note 1: Summary of Significant Accounting Policies (continued)

Future Australian Accounting Standard Requirements

Other new standards, revised standards, interpretations or amending standards that were issued by the Australian Accounting Standards Board prior to the sign-off date and are applicable to the future reporting period are not expected to have a future financial impact on the OAIC.

1.5 Revenue

Revenue from Government

Amounts appropriated for departmental outputs for the year (adjusted for any formal additions and reductions) are recognised as revenue when the OAIC gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

Other Types of Revenue

Revenue from the sale of goods is recognised when:

- the risks and rewards of ownership have been transferred to the buyer;
- the OAIC retains no managerial involvement or effective control over the goods;
- the revenue and transaction costs incurred can be reliably measured; and
- it is probable that the economic benefits associated with the transaction will flow to the entity.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- the probable economic benefits associated with the transaction will flow to the entity.

The stage of completion of contracts at the reporting date is determined by reference to:

- the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which are paid as per terms specified on the invoice(s), are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of reporting period. Allowances are made when collectability of the debt is no longer probable.

1.6 Gains

Resources Received Free of Charge

Resources received free of charge are recognised as gains when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Sale of Assets

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

1.7 Transactions with the Government as Owner

Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
for the period ended 30 June 2013

Note 1: Summary of Significant Accounting Policies (continued)

Restructuring of Administrative Arrangements

Net assets received from or relinquished to another Government entity under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

Other Distributions to Owners

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend.

1.8 Employee Benefits

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits due within twelve months of end of reporting period are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

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

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Agency is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the Agency's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the work of an actuary as at 30 June 2013. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The OAIC recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

Superannuation

Staff of the OAIC are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap).

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

The OAIC makes employer contributions to the employee superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government of the superannuation entitlements of the OAIC's employees. The OAIC accounts for the contributions as if they were contributions to defined contribution plans.

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
for the period ended 30 June 2013

Note 1: Summary of Significant Accounting Policies (continued)

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the period.

1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where an asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets.

1.10 Cash

Cash and cash equivalents includes cash on hand, cash held with outsiders, demand deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

1.11 Financial Assets

The OAIC classifies its financial assets as 'loans and receivables'.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition.

Financial assets are recognised and derecognised upon trade date.

Effective Interest Method

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

Loans and Receivables

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. Loans and receivables are measured at cost.

Impairment of Financial Assets

Financial assets are assessed for impairment at the end of each reporting periods.

Financial assets held at cost - if there is objective evidence that an impairment loss has been incurred for loans and receivables, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

1.12 Financial Liabilities

Financial liabilities are classified as 'other financial liabilities'.

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
for the period ended 30 June 2013

Note 1: Summary of Significant Accounting Policies (continued)

Financial liabilities are recognised and derecognised upon 'trade date'.

Other Financial Liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs.

Other financial liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

1.13 Contingent Liabilities and Contingent Assets

Contingent liabilities and contingent assets are not recognised in the balance sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

1.14 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor agency's accounts immediately prior to the restructuring.

1.15 Infrastructure, Plant and Equipment

Asset Recognition Threshold

Purchases of infrastructure, plant and equipment are recognised initially at cost in the balance sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

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

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
for the period ended 30 June 2013

Note 1: Summary of Significant Accounting Policies (continued)

Revaluations

Fair values for each class of asset are determined as shown below:

Asset Class	Fair Value Measured at:
Computer, plant and equipment	Market value
Leasehold improvements	Depreciated replacement cost

Following initial recognition at cost, infrastructure, plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reverse a previous revaluation increment for that class.

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

Depreciation

Depreciable infrastructure, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the OAIC using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

Asset Class	2013	2012
Computer, plant and equipment	4 to 10 years	4 to 10 years
Leasehold improvements	Lease term	Lease term

Impairment

All assets were assessed for impairment at 30 June 2013. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the OAIC were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
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Note 1: Summary of Significant Accounting Policies (continued)

Derecognition

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

1.16 Intangibles

The OAIC's intangibles comprise internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the OAIC's software are 2 to 5 years (2012: 2 to 5 years).

All software assets were assessed for indications of impairment as at 30 June 2013.

1.17 Taxation

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

Revenues, expenses and assets are recognised net of GST except:

- where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- for receivables and payables.

Note 2: Events After the Reporting Period

The Minister for Finance and Deregulation signed a determination titled 'Instrument to Reduce Appropriations (No.1 of 2013-14)' which took effect on 13 August 2013. The amount of the reduction for the Office of the Australian Information Commissioner is \$37,000 and has been reflected in a reduction of appropriation revenue for 2012-2013.

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
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Note 3: Expenses

	2013 \$'000	2012 \$'000
Note 3A: Employee Benefits		
Wages and salaries	7,433	6,821
Superannuation:		
Defined contribution plans	664	575
Defined benefit plans	656	664
Leave and other entitlements	654	966
Separation and redundancies	240	51
Other employee expenses	29	92
Total employee benefits	9,676	9,169
Note 3B: Supplier		
Goods and services		
Insurance	16	18
Office consumables	46	53
Official travel	163	281
Printing and publications	12	52
Professional services and fees	1,811	1,478
Property outgoings	303	238
Reference materials, subscriptions and licences	94	98
Staff training	82	155
Telecommunications	171	167
Other	47	116
Total goods and services	2,745	2,658
Goods and services are made up of:		
Provision of goods – related entities	8	8
Provision of goods – external parties	164	273
Rendering of services – related entities	1,586	1,388
Rendering of services – external parties	987	989
Total goods and services	2,745	2,658
Other supplier expenses		
Operating lease rentals – related entities:		
Sublease	737	543
Operating lease rentals – external parties:		
Minimum lease payments	97	238
Workers compensation expenses	52	37
Total other supplier expenses	886	818
Total supplier expenses	3,631	3,476
Note 3C: Depreciation and Amortisation		
Depreciation:		
Infrastructure, plant and equipment:		
Computer, plant and equipment	133	53
Total depreciation	133	53
Amortisation:		
Infrastructure, plant and equipment:		
Leasehold improvements	262	348
Intangibles:		
Computer software	470	107
Total amortisation	732	455
Total depreciation and amortisation	865	508
Note 3D: Write-Down and Impairment of Assets		
Asset write-downs and impairments from:		
Impairment of infrastructure, plant and equipment	102	-
Revaluation decrement - computer, plant and equipment	89	-
Total write-down and impairment of assets	191	-

Office of the Australian Information Commissioner
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Note 4: Income		
	2013	2012
	\$'000	\$'000
OWN-SOURCE REVENUE		
<u>Note 4A: Sale of Goods and Rendering of Services</u>		
Rendering of services - related entities	2,748	1,770
Rendering of services - external parties	185	220
Total sale of goods and rendering of services	<u>2,933</u>	<u>1,990</u>
GAINS		
<u>Note 4B: Sale of Assets</u>		
Property, plant and equipment:		
Proceeds from sale	1	-
Total asset sales	<u>1</u>	<u>-</u>
<u>Note 4C: Other Gains</u>		
Resources received free of charge	32	32
Total other gains	<u>32</u>	<u>32</u>
REVENUE FROM GOVERNMENT		
<u>Note 4B: Revenue from Government</u>		
Appropriations:		
Departmental appropriations	10,764	11,020
Total revenue from Government	<u>10,764</u>	<u>11,020</u>

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
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Note 5: Financial Assets

	2013 \$'000	2012 \$'000
Note 5A: Cash and Cash Equivalents		
Cash on hand or on deposit	802	664
Total cash and cash equivalents	802	664
Note 5B: Trade and Other Receivables		
Goods and Services:		
Goods and services - related entities	480	184
Goods and services - external parties	92	3
Total receivables for goods and services	572	187
Appropriations receivable:		
For existing programs	1,710	3,145
Total appropriations receivable	1,710	3,145
Other receivables:		
GST receivable from the Australian Taxation Office	2	205
Total other receivables	2	205
Total trade and other receivables (gross)	2,284	3,537
Receivables are expected to be recovered in:		
No more than 12 months	2,284	3,537
Total trade and other receivables (net)	2,284	3,537
Receivables are aged as follows:		
Not overdue	2,253	3,403
Overdue by:		
0 to 30 days	1	132
31 to 60 days	1	2
61 to 90 days	29	-
More than 90 days	-	-
Total receivables (gross)	2,284	3,537
Note 5C: Other Financial Assets		
Accrued revenue	149	-
Total other financial assets	149	-
Total other financial assets - are expected to be recovered in:		
No more than 12 months	149	-
Total other financial assets	149	-

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
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Note 6: Non-Financial Assets

	2013 \$'000	2012 \$'000
Note 6A: Infrastructure, Plant and Equipment		
Computer, plant and equipment		
Work in progress	-	28
Fair value	404	512
Accumulated depreciation	-	(60)
Total computer, plant and equipment	404	480
Leasehold improvements		
Work in progress	-	966
Fair value	2,876	2,591
Accumulated depreciation	-	(424)
Total leasehold improvements	2,876	3,133
Total infrastructure, plant and equipment	3,280	3,613

No indicators of impairment were found for property, plant and equipment.

No property, plant or equipment is expected to be sold or disposed of within the next 12 months.

Revaluations of non-financial assets

All revaluations were conducted in accordance with the revaluation policy stated at Note 1. On 30 June 2013, an independent valuer conducted the revaluations.

A revaluation increment of \$54,871 for leasehold improvements (2012: nil) was credited to the asset revaluation surplus by asset class and included in the equity section of the balance sheet; a decrement of \$89,033 was expensed (2012: nil expensed).

Note 6B: Reconciliation of the Opening and Closing Balances of Infrastructure, Plant and Equipment 2013

	Computer, plant & equipment \$'000	Leasehold improvements \$'000	Total \$'000
As at 1 July 2012			
Gross book value	540	3,557	4,097
Accumulated depreciation and impairment	(60)	(424)	(484)
Net book value 1 July 2012	480	3,133	3,613
Additions:			
By purchase	248	-	248
Revaluations recognised in other comprehensive income	-	55	55
Revaluations recognised in the operating result	(89)	-	(89)
Depreciation/Amortisation expense	(133)	(262)	(395)
Disposals:			
Other ¹	(102)	(50)	(152)
Net book value 30 June 2013	404	2,876	3,280
Net book value as of 30 June 2013 represented by:			
Gross book value	404	2,876	3,280
Accumulated depreciation and impairment	-	-	-
	404	2,876	3,280

¹ Other movements relate to assets written-down (refer Note 3D) and leasehold fit-out refund.

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
for the period ended 30 June 2013

Note 6B: Reconciliation of the Opening and Closing Balances of Infrastructure, Plant and Equipment 2012

	Computer, plant & equipment \$'000	Leasehold improvements \$'000	Total \$'000
As at 1 July 2011			
Gross book value	719	2,576	3,295
Accumulated depreciation and impairment	(7)	(67)	(74)
Net book value 1 July 2011	712	2,509	3,221
Additions:			
By purchase	231	972	1,203
Depreciation/Amortisation expense	(53)	(348)	(401)
Other movements ¹	(410)	-	(410)
Net book value 30 June 2012	480	3,133	3,613
Net book value as of 30 June 2012 represented by:			
Gross book value	540	3,557	4,097
Accumulated depreciation and impairment	(60)	(424)	(484)
	480	3,133	3,613

¹ Other movements relate to previous year's work in progress transferred to intangibles (refer note 6D)

	2013 \$'000	2012 \$'000
Note 6C: Intangibles		
Computer software:		
Work in progress	96	167
Internally developed – in use	2,427	2,151
Accumulated amortisation	(588)	(118)
Total computer software	1,935	2,200
Total intangibles	1,935	2,200

No indicators of impairment were found for intangible assets.

No intangibles are expected to be sold or disposed of within the next 12 months.

Note 6D: Reconciliation of the Opening and Closing Balances of Intangibles 2013

	Work-in- progress	Computer software internally developed - in use \$'000	Total \$'000
As at 1 July 2012			
Gross book value	-	2,318	2,318
Accumulated amortisation and impairment	-	(118)	(118)
Net book value 1 July 2012	-	2,200	2,200
Additions:			
By purchase or internally developed	96	109	205
Amortisation	-	(470)	(470)
Net book value 30 June 2013	96	1,839	1,935
Net book value as of 30 June 2013 represented by:			
Gross book value	96	2,427	2,523
Accumulated amortisation and impairment	-	(588)	(588)
	96	1,839	1,935

Office of the Australian Information Commissioner
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Note 6D: Reconciliation of the Opening and Closing Balances of Intangibles 2012

	Work- in- progress	Computer software internally developed - in use \$'000	Total \$'000
As at 1 July 2011			
Gross book value	-	516	516
Accumulated amortisation and impairment	-	(11)	(11)
Net book value 1 July 2011	-	505	505
Additions:			
By purchase or internally developed	-	1,392	1,392
Other ¹	-	410	410
Amortisation	-	(107)	(107)
Net book value 30 June 2012	-	2,200	2,200
Net book value as of 30 June 2012 represented by:			
Gross book value	-	2,318	2,318
Accumulated amortisation and impairment	-	(118)	(118)
Net book value 30 June 2012	-	2,200	2,200

¹ Other movements relate to previous year's work in progress transferred to intangibles (refer note 6D)

	2013 \$'000	2012 \$'000
<u>Note 6E: Other Non-Financial Assets</u>		
Prepayments	88	41
Total other non-financial assets	88	41
Total other non-financial assets - are expected to be recovered in:		
No more than 12 months	88	41
Total other non-financial assets	88	41

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

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
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Note 7: Payables

	2013 \$'000	2012 \$'000
Note 7A: Suppliers		
Trade creditors and accruals	424	1,098
Rent payable	257	126
Total suppliers payable	681	1,224
Suppliers payable expected to be settled within 12 months:		
Related entities	220	711
External parties	204	284
Total	424	995
Suppliers payable expected to be settled in greater than 12 months:		
External parties	257	229
Total	257	229
Total suppliers payable	681	1,224
Settlement is generally made accordance with the terms of the supplier invoice.		
Note 7B: Other Payables		
Wages and salaries	185	215
Superannuation	34	41
Other employee expenses	19	15
Revenue received in advance	599	361
Total other payables	837	632
Total other payables are expected to be settled in:		
No more than 12 months	837	626
More than 12 months	-	6
Total other payables	837	632

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Note 8: Non-interest Bearing Liabilities

	2013 \$'000	2012 \$'000
Note 8A: Non-interest Bearing Liabilities		
Lease incentives ¹	1,936	2,189
Total non-interest bearing liabilities	1,936	2,189
Payable:		
Within one year	241	258
In one to five years	1,205	1,207
In more than five years	490	724
Total non-interest bearing liabilities	1,936	2,189

¹ Lease incentive included in property operating lease.

Note 9: Provisions

	2013 \$'000	2012 \$'000
Note 9A: Employee Provisions		
Leave	2,272	2,318
Separations and redundancies	-	331
Total employee provisions	2,272	2,649
Employee provisions are expected to be settled in:		
No more than 12 months	1,700	1,832
More than 12 months	572	817
Total employee provisions	2,272	2,649

Note 10: Cash Flow Reconciliation

	2013 \$'000	2012 \$'000
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Cash and cash equivalents as per:		
Cash flow statement	802	664
Balance sheet	802	664
Difference	-	-
Reconciliation of net cost of services to net cash from operating activities:		
Net cost of services	(11,397)	(11,131)
Add revenue from Government	10,764	11,020
Adjustments for non-cash items		
Depreciation / amortisation	865	508
Net write down of non-financial assets	191	-
Unwinding of leasehold fitout incentive	(253)	(307)
Changes in assets / liabilities		
(Increase) / decrease in net receivables	1,000	(992)
(Increase) / decrease in other financial assets	(149)	-
(Increase) / decrease in other non-financial assets	(47)	(10)
Increase / (decrease) in employee provisions	(377)	380
Increase / (decrease) in supplier payables	(329)	480
Increase / (decrease) in other payables	204	410
Increase / (decrease) in other provisions	-	(21)
Net cash from/(used by) operating activities	472	337

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Notes to and forming part of the financial statements
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Note 11: Contingent Assets and Liabilities

Unquantifiable Contingencies

At 30 June 2013, the OAIC had no unquantifiable contingencies.

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
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Note 12: Senior Executive Remuneration

Note 12A: Senior Executive Remuneration Expenses for the Reporting Period

	2013 \$	2012 \$
Short-term employee benefits:		
Salary	1,152,258	1,413,580
Annual leave accrued	23,513	(3,275)
Other	7,200	21,482
Total short-term employee benefits	1,182,971	1,431,787
Post-employment benefits:		
Superannuation	181,629	209,361
Total post-employment benefits	181,629	209,361
Other long-term employee benefits:		
Long-service leave	15,823	30,470
Total other long-term employee benefits	15,823	30,470
Termination benefits:		
Separation and redundancy payments	130,343	-
Total termination benefits	130,343	-
Total senior executive remuneration expenses	1,510,766	1,671,618

1. Note 12A is prepared on an accrual basis.

2. Note 12A excludes acting arrangements and part-year service where total remuneration expensed as a senior executive was less than \$180,000.

Note 12B: Average Annual Reportable Remuneration Paid to Substantive Senior Executives during the Reporting Period

Average annual reportable remuneration paid to substantive senior executives in 2013

Average annual reportable remuneration ¹	Substantive senior executives	Reportable salary ²	Contributed superannuation ³	Reportable allowances ⁴	Bonus paid ⁵	Total reportable remuneration
	No.	\$	\$	\$	\$	\$
Total reportable remuneration (including part-time arrangements):						
Less than \$180,000	1	65,861	9,419	-	-	75,280
\$180,000 to \$209,999	1	177,004	5,674	3,724	-	186,402
\$210,000 to \$239,999	1	190,986	33,966	-	-	224,952
\$330,000 to \$359,999	2	301,425	45,534	1,610	-	348,569
\$390,000 to \$419,999	1	360,703	50,923	256	-	411,882
Total number of substantive senior executives	6					

Average annual reportable remuneration paid to substantive senior executives in 2012

Average annual reportable remuneration ¹	Substantive senior executives	Reportable salary ²	Contributed superannuation ³	Reportable allowances ⁴	Bonus paid ⁵	Total reportable remuneration
	No.	\$	\$	\$	\$	\$
Total reportable remuneration (including part-time arrangements):						
\$180,000 to \$209,999	1	174,478	22,571	255	-	197,304
\$210,000 to \$239,999	2	171,493	29,270	10,042	-	210,805
\$300,000 to \$329,999	2	266,672	55,764	440	-	322,876
\$360,000 to \$379,999	1	292,313	87,180	264	-	379,757
Total number of substantive senior executives	6					

1. This table reports substantive senior executives who received remuneration during the reporting period. Each row is an averaged figure based on headcount for individuals in the band.

2. 'Reportable salary' includes the following:

- gross payments (less any bonuses paid, which are separated out and disclosed in the 'bonus paid' column);
- reportable fringe benefits (at the net amount prior to 'grossing up' for tax purposes);
- exempt foreign employment income; and
- salary sacrificed benefits.

3. The 'contributed superannuation' amount is the average cost to the entity for the provision of superannuation benefits to substantive senior executives in that reportable remuneration band during the reporting period.

4. 'Reportable allowances' are the average actual allowances paid as per the 'total allowances' line on individuals' payment summaries.

5. 'Bonus paid' represents average actual bonuses paid during the reporting period in that reportable remuneration band. The 'bonus paid' within a particular band may vary between financial years due to various factors such as individuals commencing with or leaving the entity during the financial year.

Note 12C: Average Annual Reportable Remuneration Paid to Other Highly Paid Staff during the Reporting Period

During the reporting period there were no employees whose salary plus performance bonus was \$180,000 or more and did not have a role as a senior executive and are therefore not disclosed as a senior executive in Notes 12A and Note 12B above. (2012: Nil)

Office of the Australian Information Commissioner
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Note 13: Remuneration of Auditors

	2013	2012
	\$'000	\$'000
Financial statement audit services were provided free of charge to the OAIC by the Australian National Audit Office (ANAO).		

Fair value of the services provided

Financial statement audit services	32	32
Total	32	32

No other services were provided by the ANAO.

Office of the Australian Information Commissioner
Notes to and forming part of the financial statements
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Note 14: Financial Instruments

	2013	2012
	\$'000	\$'000
Note 14A: Categories of Financial Instruments		
Financial Assets		
Loans and receivables:		
Cash and cash equivalents	802	664
Trade receivables	572	187
Carrying amount of financial assets	1,374	851
Financial Liabilities		
Other liabilities:		
Supplier payables	681	1,224
Lease incentives	1,936	2,189
Revenue received in advance	599	361
Carrying amount of financial liabilities	3,216	3,774

Note 14B: Fair Value of Financial Instruments

	Carrying amount	Fair value	Carrying amount	Fair value
	2013	2013	2012	2012
	\$'000	\$'000	\$'000	\$'000
Financial Assets				
Cash and cash equivalents	802	802	664	664
Trade receivables	572	572	187	187
	1,374	1,374	851	851
Financial Liabilities				
Supplier Payables	681	681	1,224	1,224
Lease incentives	1,936	1,936	2,189	2,189
Revenue received in advance	599	599	361	361
	3,216	3,216	3,774	3,774

Note 14C: Credit Risk

The OAIC's maximum exposures to credit risk at reporting date in relation to each class of recognised financial asset is the carrying amount of the OAIC has no significant exposures to any concentrations of credit risk nor does it hold any collateral to mitigate against credit risk.

Credit quality of financial instruments not past due or individually determined as impaired

	Not past due nor impaired	Not past due nor impaired	Past due or impaired	Past due or impaired
	2013	2012	2013	2012
	\$'000	\$'000	\$'000	\$'000
Loans and receivables				
Cash and cash equivalents	802	664	-	-
Trade receivables	541	46	31	141
	1,343	710	31	141

Ageing of financial assets that were past due but not impaired for 2013

	0 to 30 days	31 to 60 days	61 to 90 days	90+ days	Total
	\$'000	\$'000	\$'000	\$'000	\$'000
Trade receivables	1	1	29	-	31
	1	1	29	-	31

Ageing of financial assets that were past due but not impaired for 2012

	0 to 30 days	31 to 60 days	61 to 90 days	90+ days	Total
	\$'000	\$'000	\$'000	\$'000	\$'000
Trade receivables	132	2	7	-	141
	132	2	7	-	141

Note 14D: Liquidity Risk

The OAIC's financial liabilities are payables, accrued expenses, revenue received in advance and other non-interest bearing liabilities. The exposure to liquidity risk is based on the notion that the OAIC will encounter difficulty in meeting its obligations associated with financial liabilities. This is unlikely due to the appropriation funding and mechanisms available to the OAIC (e.g. Advance to the Minister for Finance) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

Maturities for non-derivative financial liabilities 2013

	On demand	within 1 year	1 to 2 years	2 to 5 years	> 5 years	Total
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Other liabilities						
Supplier payables	-	424	-	-	257	681
Lease incentives	-	241	482	723	490	1,936
Revenue received in advance	-	837	-	-	-	837
Total	-	1,502	482	723	747	3,454

Maturities for non-derivative financial liabilities 2012

	On demand	within 1 year	1 to 2 years	2 to 5 years	> 5 years	Total
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Other liabilities						
Supplier payables	-	995	229	-	-	1,224
Lease incentives	-	258	482	725	724	2,189
Revenue received in advance	-	635	6	-	-	641
Total	-	1,888	717	725	724	4,054

The OAIC has no derivative financial liabilities in both the current and prior financial years.

Note 14E: Market Risk

The OAIC holds basic financial instruments that do not expose the OAIC to certain market risks. The OAIC is not exposed to 'interest rate risk', 'currency risk' or 'other price risk'.

Notes to and forming part of the financial statements
for the period ended 30 June 2013

Note 15: Financial Assets Reconciliation

		2013	2012
		\$'000	\$'000
<u>Financial assets</u>	Notes		
Total financial assets as per balance sheet		3,235	4,201
Less: non-financial instrument components			
GST Receivable from the Australian Taxation Office	5B	2	205
Appropriations receivable	5B	1,710	3,145
Accrued revenue	5B	149	-
Total non-financial instrument components		1,861	205
Total financial assets as per financial instruments note		1,374	3,996

Office of the Australian Information Commissioner
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Note 16: Appropriations**Table A: Annual Appropriations ('Recoverable GST exclusive')**

	2013 Appropriations						Appropriation applied in 2013 (current and prior years) \$'000	Variance ¹ \$'000	
	Appropriation Act			FMA Act					
	Annual Appropriation \$'000	Appropriations reduced \$'000	AFM \$'000	Section 30 \$'000	Section 31 \$'000	Section 32 \$'000			
DEPARTMENTAL									
Ordinary annual services	10,821	-	-	-	2,580	-	13,401	(14,631)	(1,230)
Other services									
Equity	-	-	-	-	-	-	-	-	-
Loans	-	-	-	-	-	-	-	-	-
Total departmental	10,821	-	-	-	2,580	-	13,401	(14,631)	(1,230)

Notes:

1. Variance represents payments made in the current reporting period using previous years undrawn and unspent appropriation funding.

	2012 Appropriations						Appropriation applied in 2012 (current and prior years) \$'000	Variance ¹ \$'000	
	Appropriation Act			FMA Act					
	Annual Appropriation \$'000	Appropriations reduced \$'000	AFM \$'000	Section 30 \$'000	Section 31 \$'000	Section 32 \$'000			
DEPARTMENTAL									
Ordinary annual services	11,045	-	-	-	2,252	-	13,297	(12,235)	1,062
Other services									
Equity	-	-	-	-	-	-	-	(2,160)	(2,160)
Loans	-	-	-	-	-	-	-	-	-
Total departmental	11,045	-	-	-	2,252	-	13,297	(14,395)	(1,098)

Notes:

1. Variance represents unspent appropriation funding in the current year and previous year's equity injection drawn in the current year.

Table B: Departmental Capital Budget ('Recoverable GST exclusive')

	2013 Capital Budget Appropriations				Capital Budget Appropriations applied in 2013 (current and prior years)			Variance ³ \$'000
	Appropriation Act		FMA Act	Total Capital Budget Appropriations \$'000	Payments for non-financial assets ² \$'000	Payments for other purposes \$'000	Total payments \$'000	
	Annual Capital Budget \$'000	Appropriations reduced \$'000	Section 32 \$'000					
DEPARTMENTAL								
Ordinary annual services- Departmental Capital Budget ¹	20	-	-	20	(404)	-	(404)	(384)

Notes:

1. Departmental Capital Budgets are appropriated through Appropriation Acts (No.1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts. For more information on ordinary annual services appropriations, please see Table A: Annual appropriations.

2. Payments made on non-financial assets include purchases of assets and expenditure on assets which has been capitalised.

3. Variance represents payments made in the current reporting period using previous years undrawn and unspent departmental capital budget appropriation and appropriation for ordinary annual services.

	2012 Capital Budget Appropriations				Capital Budget Appropriations applied in 2012 (current and prior years)			Variance ³ \$'000
	Appropriation Act		FMA Act	Total Capital Budget Appropriations \$'000	Payments for non-financial assets ² \$'000	Payments for other purposes \$'000	Total payments \$'000	
	Annual Capital Budget \$'000	Appropriations reduced \$'000	Section 32 \$'000					
DEPARTMENTAL								
Ordinary annual services- Departmental Capital Budget ¹	25	-	-	25	-	-	-	25

Notes:

1. Departmental Capital Budgets are appropriated through Appropriation Acts (No.1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts. For more information on ordinary annual services appropriations, please see Table A: Annual appropriations.

2. Payments made on non-financial assets include purchases of assets and expenditure on assets which has been capitalised.

3. Variance represents the balance of undrawn and unspent departmental capital budget appropriation.

Table C: Unspent Annual Appropriations ('Recoverable GST exclusive')

	2013 \$'000	2012 \$'000
Authority		
DEPARTMENTAL		
Appropriation Act (No. 1) 2010-2011	-	1,541
Appropriation Act (No. 1) 2011-2012	-	1,554
Appropriation Act (No. 1) 2012-2013	1,747	-
Capital Budget Bill 1 (DCB) 2010-2011	-	25
Capital Budget Bill 1 (DCB) 2011-2012	-	25
Cash held by the OAIC	802	664
Total	2,549	3,809

Office of the Australian Information Commissioner
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Note 17: Compensation and Debt Relief

The OAIC made no payments for compensation or debt relief during the reporting period.

Office of the Australian Information Commissioner
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Note 18: Reporting of Outcomes

Note 18A: Net Cost of Outcome Delivery

	Outcome 1		Total	
	2013	2012	2013	2012
	\$'000	\$'000	\$'000	\$'000
Departmental				
Expenses	14,363	13,153	14,363	13,153
Own-source income	2,966	2,022	2,966	2,022
Net cost of outcome delivery	(11,397)	(11,131)	(11,397)	(11,131)

Note 18B: Major Classes of Departmental Expense, Income, Assets and Liabilities by Outcome

	Outcome 1		Total	
	2013	2012	2013	2012
	\$'000	\$'000	\$'000	\$'000
Expenses				
Employee benefits	9,676	9,169	9,676	9,169
Supplier	3,631	3,476	3,631	3,476
Depreciation and Amortisation	865	508	865	508
Write-down and impairment of assets	191	-	191	-
Total	14,363	13,153	14,363	13,153
Income				
Sales of goods and services	2,933	1,990	2,933	1,990
Revenue from Government	10,764	11,020	10,764	11,020
Sale of assets	1	-	1	-
Other gains	32	32	32	32
Total	13,730	13,042	13,730	13,042
Assets				
Cash and cash equivalents	802	664	802	664
Trade and other receivables	2,284	3,537	2,284	3,537
Other financial assets	149	-	149	-
Infrastructure, plant and equipment	3,280	3,613	3,280	3,613
Intangibles	1,935	2,200	1,935	2,200
Other non-financial assets	88	41	88	41
Total	8,538	10,054	8,538	10,054
Liabilities				
Suppliers	681	1,224	681	1,224
Lease incentives	1,936	2,189	1,936	2,189
Employee provisions	2,272	2,649	2,272	2,649
Other provisions and payables	837	630	837	630
Total	5,726	6,692	5,726	6,692

Outcome 1 is described in Note 1.1. Net costs shown included intra-government costs that were eliminated in calculating the actual Budget Outcome. Refer to Outcome 1 Resourcing Table in Appendix 1 of this Annual Report.

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Note 19: Net Cash Appropriation Arrangements

	2013 \$'000	2012 \$'000
Total comprehensive income (loss) less depreciation/amortisation expenses previously funded through revenue appropriations¹	287	397
Plus: depreciation/amortisation expenses previously funded through revenue appropriation	(865)	(508)
Total comprehensive loss per the Statement of Comprehensive Income	(578)	(111)

1. From 2010-11, the Government introduced net cash appropriation arrangements, where revenue appropriations for depreciation/amortisation expenses ceased. Entities now receive a separate capital budget provided through equity appropriations. Capital budgets are to be appropriated in the period when cash payment for capital expenditure is required.

Note 20: Compliance with Statutory Conditions for Payments from the Consolidated Revenue Fund

During 2012-2013 additional legal advice was received that indicated there could be breaches of Section 83 under certain circumstances with payments for long service leave, goods and services tax and payments under determinations of the Remuneration Tribunal. The OAIC will review its processes and controls over payments for these items to minimise the possibility for future breaches as a result of these payments.



Appendix 3 — Information Publication Scheme

Information Publication Scheme

Agencies subject to the *Freedom of Information Act 1982* (FOI Act) are required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement is in Part II of the FOI Act and has replaced the former requirement to publish a section 8 statement in an annual report. Each agency must display on its website a plan showing what information it published in accordance with the IPS requirements.

The Office of the Australian Information Commissioner's IPS can be found at:
www.oaic.gov.au/ips.

Appendix 4 — Agencies subject to the FOI Act as at 30 June 2013

Australian Government ministers, and bodies that meet the definition of ‘agency’ in s 4(1), are subject to the *Freedom of Information Act 1982* (FOI Act). Table A4.1 below indicates which bodies are covered by the FOI Act, and which are excluded. Some agencies, such as courts, are subject to the FOI Act but only in relation to a limited class of documents.

This appendix lists Australian government agencies, ministers and parliamentary secretaries by portfolio. From 1 January 2011, the FOI Act has applied to Norfolk Island ministers and authorities; individual ministers and authorities are not listed in this appendix.

The list in this appendix is based upon information provided by agencies, and is not authoritative.

Table A4.1 Agencies covered by the FOI Act and those that are excluded.

FOI Act agencies	Exceptions
<p>Departments of State</p> <p>All Departments of State (eg the Department of Foreign Affairs and Trade, and the Department of Health and Ageing) are subject to the FOI Act.</p>	<p>→ Section 68A of the <i>Parliamentary Service Act 1999</i> excludes departments and office-holders established under that Act from the application of the FOI Act.</p>
<p>Bodies established by the Commonwealth for a public purpose</p> <p>Bodies set up for a public purpose under legislation, or by an Order in Council, are subject to the FOI Act.</p>	<p>→ General exceptions are set out in s 4 of the FOI Act and include:</p> <ul style="list-style-type: none"> • incorporated companies or associations • Royal Commissions • commissions of inquiry within the meaning of the <i>Quarantine Act 1908</i> or the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> • the legislature of the NT, ACT or Norfolk Island. • Section 7 also excludes the bodies specified in Part I of Schedule 2 to the Act (which include intelligence agencies, the Parliamentary Budget Office, the Australian Government Solicitor and the Auditor-General).

FOI Act agencies	Exceptions
<p>Holders of an office established for a public purpose</p> <p>Holders of an office established under an enactment or an Order in Council are subject to the FOI Act.</p>	<p>→ The following exceptions are set out in s 4(3):</p> <ul style="list-style-type: none"> • members of the legislature of the NT, ACT or Norfolk Island • ministers of the NT or ACT or Administrator or Deputy Administrator of Norfolk Island. • a holder of an office established under s 12 of the <i>Norfolk Island Act 1979</i> • an office performing duties as part of employment by a department or a prescribed authority • an office excluded by Regulations • an office of a member of a body • an office established for the purposes of a prescribed authority.
<p>Courts</p> <p>Courts are deemed to be prescribed authorities, and subject to the FOI Act in respect of administrative matters.</p>	
<p>Prescribed bodies</p> <p>These bodies are listed in Schedule 1 to the <i>Freedom of Information (Miscellaneous Provisions) Regulations 1982</i>. As at 30 June 2013 the only body listed under the regulations was Aboriginal Hostels Limited.</p>	
<p>Prescribed office holder</p> <p>As at 30 June 2013 there were no prescribed office holders.</p>	
<p>National Broadband Network (NBN Co)</p> <p>NBN Co is listed in paragraph (aa) of the definition of prescribed authority in s 4(1) of the FOI Act.</p>	

Administration of Norfolk Island

Administration of Norfolk Island

Agriculture, Fisheries and Forestry

Australian Fisheries Management Authority
Australian Pesticides and Veterinary Medicines Authority
Cotton Research and Development Corporation
Department of Agriculture, Fisheries and Forestry
Fisheries Research and Development Corporation
Grains Research and Development Corporation
Grape and Wine Research and Development Corporation
Minister for Agriculture, Fisheries and Forestry
National Rural Advisory Council
Parliamentary Secretary for Agriculture, Fisheries and Forestry
Rural Industries Research and Development Corporation
Sugar Research and Development Corporation
Wheat Exports Australia
Wine Australia Corporation

Attorney-General's

Administrative Appeals Tribunal
Administrative Review Council
Admiralty Rules Committee
Attorney-General
Attorney-General's Department
Australian Commission for Law Enforcement Integrity
Australian Crime Commission
Australian Customs and Border Protection Service
Australian Federal Police
Australian Human Rights Commission
Australian Institute of Criminology
Australian Law Reform Commission
Australian Transaction Reports and Analysis Centre
Classification Board
Classification Review Board
Copyright Tribunal of Australia
Criminology Research Council
CrimTrac
Defence Force Discipline Appeal Tribunal
Family Court of Australia
Family Law Council

Federal Circuit Court of Australia
Federal Court of Australia
High Court of Australia
Insolvency and Trustee Service Australia
Minister Assisting on Queensland Floods Recovery
Minister for Emergency Management
Minister for Home Affairs
Minister for Justice
National Native Title Tribunal
Office of the Australian Information Commissioner
Office of the Commonwealth Director of Public Prosecutions
Office of Parliamentary Counsel
Solicitor-General

Broadband, Communications and the Digital Economy

Australian Broadcasting Corporation
Australian Communications and Media Authority
Australian Postal Corporation
Department of Broadband, Communications and the Digital Economy
Minister for Broadband, Communications and the Digital Economy
NBN Co Ltd
Special Broadcasting Service Corporation
Telecommunications Universal Service Management Agency

Climate Change and Energy Efficiency

Clean Energy Regulator
Climate Change Authority
Department of Climate Change and Energy Efficiency
Minister for Climate Change and Energy Efficiency
Parliamentary Secretary for Climate Change and Energy Efficiency

Defence

Army and Air Force Canteen Service
Australian Defence Human Research Ethics Committee
Australian Military Forces Relief Trust Fund
Defence Families of Australia
Defence Housing Australia
Defence Reserves Support Council
Department of Defence
Minister for Defence
Minister for Defence Materiel
Minister for Defence Science and Personnel

Parliamentary Secretary for Defence
Royal Australian Air Force Veterans Residences Trust Fund
Royal Australian Air Force Welfare Trust Fund
Royal Australian Navy Central Canteens Fund
Royal Australian Navy Relief Trust Fund

Education, Employment and Workplace Relations

Australian Curriculum, Assessment and Reporting Authority
Australian National University
Coal Mining Industry (Long Service Leave Funding) Corporation
Comcare
Department of Education, Employment and Workplace Relations
Fair Work Commission
Fair Work Ombudsman
Minister for Early Childhood and Childcare
Minister for Employment and Workplace Relations
Minister for Employment Participation
Minister for Indigenous Employment and Economic Development
Minister for School Education, Early Childhood and Youth
Office of the Fair Work Building Industry Inspectorate
Parliamentary Secretary for School Education and Workplace Relations
Safe Work Australia
Safety, Rehabilitation and Compensation Commission
Seafarers Safety, Rehabilitation and Compensation Authority
The Tertiary Education Quality and Standards Agency

Families, Housing, Community Services and Indigenous Affairs

Aboriginal Benefit Account Advisory Committee
Aboriginal Hostels Limited
Coordinator General for Remote Indigenous Services
Department of Families, Housing, Community Services and Indigenous Affairs
Executive Director of Township Leasing
Indigenous Business Australia
Indigenous Land Corporation
Minister for Community Services
Minister for Disability Reform
Minister for Families, Community Services and Indigenous Affairs
Minister for Homelessness
Minister for Housing
Minister for the Status of Women
Office of the Registrar of Indigenous Corporations

Parliamentary Secretary for Disabilities and Carers
Social Security Appeals Tribunal
Torres Strait Regional Authority
Workplace Gender Equality Agency
Wreck Bay Aboriginal Community Council

Finance and Deregulation

Albury-Wodonga Corporation
Australasian Procurement and Construction Council Inc
Australian Electoral Commission
Australian Political Exchange Council
Commonwealth Superannuation Corporation
ComSuper
Department of Finance and Deregulation
Future Fund Management Agency
Minister Assisting for Deregulation
Minister for Finance and Deregulation
Parliamentary Retiring Allowances Trust
Secretaries' ICT Governance Board
Special Minister of State

Foreign Affairs and Trade

Australian Agency for International Development
Australian Centre for International Agricultural Research
Australian Trade Commission
Department of Foreign Affairs and Trade
Export Finance and Insurance Corporation
Minister for Foreign Affairs
Minister for Trade and Competitiveness
Parliamentary Secretary for Foreign Affairs
Parliamentary Secretary for Pacific Island Affairs
Parliamentary Secretary for Trade

Health and Ageing

Advisory Committee on Biologicals
Advisory Committee on Chemicals Scheduling
Advisory Committee on Complementary Medicines
Advisory Committee on Medical Devices
Advisory Committee on Medicines Scheduling
Advisory Committee on Non-prescription Medicines
Advisory Committee on Prescription Medicines
Advisory Committee on the Safety of Medical Devices

Advisory Committee on the Safety of Medicines
Aged Care Commissioner
Australian Commission on Safety and Quality in Health Care
Australian Commission on Safety and Quality in Healthcare Board
Australian Community Pharmacy Authority
Australian Institute of Health and Welfare
Australian National Preventative Health Agency
Australian Organ and Tissue Donation and Transplantation Authority
Australian Radiation Protection and Nuclear Safety Agency
Cancer Australia
Complaints Resolution Panel (Therapeutic good advertising)
Department of Health and Ageing
Food Standards Australia New Zealand
Gene Technology Ethics and Community Consultative Committee
Gene Technology Ministerial Council
Gene Technology Regulator
Gene Technology Technical Advisory Committee
Health and Hospitals Fund Advisory Board
Health Workforce Australia
Independent Hospital Pricing Authority
Independent Review PBS Cost Recovery Committee
Medical Training Review Panel
Medicare Participation Review Committee
Minister for Health and Medical Research
Minister for Indigenous Health
Minister for Mental Health and Ageing
National Blood Authority
National Health and Medical Research Council
National Health Performance Agency
National Industrial Chemicals Notification and Assessment Scheme
Parliamentary Secretary for Health and Ageing
Pathology Services Table Committee
Pharmaceutical Benefits Advisory Committee
Pharmaceutical Benefits Remuneration Tribunal
Private Health Insurance Administration Council
Private Health Insurance Ombudsman
Professional Services Review
Prostheses List Advisory Committee
Second Review Dental Benefits Act 2008 Committee
Therapeutic Goods Advertising Codes Council
Therapeutic Goods Committee

Human Services

Australian Hearing
Department of Human Services
Minister for Human Services

Immigration and Citizenship

Department of Immigration and Citizenship
Migration Review Tribunal
Minister for Immigration and Citizenship
Minister for Multicultural Affairs
Refugee Review Tribunal

Industry, Innovation, Research, Science and Tertiary Education

Australian Institute of Aboriginal and Torres Strait Island Studies
Australian Institute of Marine Science
Australian Nuclear Science and Technology Organisation
Australian Research Council
Australian Skills Quality Authority
Commonwealth Scientific and Industrial Research Organisation
Committees established under Tradesmen’s Rights Regulation Act 1946
Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education
Designs Office
Minister Assisting for Industry and Innovation
Minister for Industry and Innovation
Minister for Small Business
Minister for Tertiary Education, Skills, Science and Research
Parliamentary Secretary for Higher Education and Skills
Parliamentary Secretary for Industry and Innovation
Patent and Trade Marks Attorneys Disciplinary Tribunal
Patent Office
Plant Breeder’s Rights Advisory Committee
Professional Standards Board for Patent and Trade Marks Attorneys
Skills Australia Board
The Contributions Review Panel
The Education Investment Fund Advisory Board
Trade Marks Office

Infrastructure and Transport

Airservices Australia
Australian Maritime Safety Authority
Australian Transport Safety Bureau

Civil Aviation Safety Authority
Department of Infrastructure and Transport
Infrastructure Australia
International Air Services Commission
Marine Council
Minister for Infrastructure and Transport
National Transport Commission
Parliamentary Secretary for Infrastructure and Transport

Prime Minister and Cabinet

Australian Institute of Family Studies
Australian Public Service Commission
Cabinet Secretary
Commonwealth Ombudsman
Defence Force Remuneration Tribunal
Department of the Prime Minister and Cabinet
Merit Protection Commissioner
Minister Assisting the Prime Minister on Asian Century Policy
Minister Assisting the Prime Minister on Digital Productivity
Minister Assisting the Prime Minister on Mental Health Reform
Minister Assisting the Prime Minister on the Centenary of ANZAC
Minister for the Public Service and Integrity
Minister for Social Inclusion
Office of the Official Secretary to the Governor-General
Parliamentary Secretary to the Prime Minister
Prime Minister
Remuneration Tribunal

Regional Australia, Local Government, Arts and Sports

Australia Council for the Arts
Australian Film, Television and Radio School
Australian National Maritime Museum
Australian Sports Anti-Doping Authority
Australian Sports Commission
Department of Regional Australia, Development and Local Government, Arts and Sports
Film Certification Advisory Board
Minister for Regional Australia, Regional Development and Local Government
Minister for Sport
Minister for the Arts
Museum of Australian Democracy
National Archives of Australia

National Capital Authority
National Film and Sound Archive of Australia
National Gallery of Australia
National Library of Australia
National Museum of Australia
Public Lending Right Committee
Screen Australia
Sport and Recreation Ministers' Council

Resources, Energy and Tourism

Australian Renewable Energy Agency
Department of Resources, Energy and Tourism
Geoscience Australia
Minister for Resources and Energy
Minister for Tourism
National Offshore Petroleum Safety and Environmental Management Authority
Offshore Minerals Joint Authority
Tourism Australia

Sustainability, Environment, Water, Populations and Communities

Australian Heritage Council
Bureau of Meteorology
Commonwealth Environmental Water Holder
Department of Sustainability, Environment, Water, Population and Communities
Director of National Parks
Great Barrier Reef Marine Park Authority
Minister for Sustainability, Environment, Water, Population and Communities
Murray-Darling Basin Authority
National Environment Protection Council
National Environment Protection Council Service Corporation
National Water Commission
Parliamentary Secretary for Sustainability and Urban Water
Sydney Harbour Federation Trust
Water Efficiency Labelling and Standards Regulator

Treasury

Assistant Treasurer
Auditing and Assurance Standards Board
Australian Accounting Standards Board
Australian Bureau of Statistics
Australian Charities and Not-for-Profits Commission
Australian Competition and Consumer Commission

Australian Competition Tribunal
Australian Energy Regulator
Australian Prudential Regulatory Authority
Australian Reinsurance Pool Corporation
Australian Securities and Investment Commission
Australian Statistics Advisory Council
Australian Taxation Office
Clean Energy Finance Corporation
Commonwealth Grants Commission
Companies Auditors and Liquidators Disciplinary Board
Corporations and Markets Advisory Committee
Department of the Treasury
Financial Reporting Council
Financial Reporting Panel
Inspector-General of Taxation
Minister for Financial Services and Superannuation
National Competition Council
Parliamentary Secretary to the Treasurer
Productivity Commission
Reserve Bank of Australia
Superannuation Complaints Tribunal
Takeovers Panel
Tax Practitioners Board
Treasurer

Veterans' Affairs

Australian War Memorial
Department of Veterans' Affairs
Military Rehabilitation and Compensation Commission
Minister for Veterans' Affairs
Repatriation Commission
Repatriation Medical Authority
Specialist Medical Review Council
Veterans' Review Board

Appendix 5 — Memorandums of understanding

Australian Human Rights Commission Memorandum of Understanding

The Office of the Australian Information Commissioner (OAIC) held a Memorandum of Understanding (MOU) with the Australian Human Rights Commission (AHRC) which covers the provision of corporate services to the OAIC. This included financial, administrative, information technology and human resources. The OAIC paid \$1,961,696 for these services in 2012–13. The OAIC also sub-let premises in Sydney from the AHRC under this arrangement.

ACT Government Department of Justice and Community Safety Memorandum of Understanding

The OAIC renewed a MOU with the ACT Government Department of Justice and Community Safety until 30 June 2013. Under the MOU, the OAIC provided a number of privacy services to the ACT Government including: handling privacy complaints and enquiries about ACT Government agencies, providing policy advice, carrying out audits, providing privacy training on request, and facilitating the Information Contact Officers Network (ICON).

In 2012–13, the OAIC received \$100,299 (including GST) for the provision of these services.

Centrelink

The OAIC continued to undertake its responsibilities under the *Data-matching Program (Assistance and Tax) Act 1990* throughout 2012–13. The OAIC received funding of \$279,732 (including GST) from Centrelink to support the costs of monitoring the conduct of the data-matching program.

Australian Customs and Border Protection Service Memorandum of Understanding

The OAIC has held an agreement with the Australian Customs and Border Protection Service (Customs) since May 2008. The OAIC provides ongoing privacy advice as well as two audits a year of various aspects of Customs' use of Passenger Name Record data. The OAIC invoiced Customs for \$80,000 (including GST) in 2012–13 to support the costs of this work. This MOU was renewed in January 2013 and supersedes the 2008 MOU.

Department of Human Services Memorandum of Understanding — Service Delivery Reform and General Functions across the Department of Human Services

The OAIC held an agreement with the Department of Human Services to provide privacy advice and assistance in relation to the Government's Service Delivery Reform Agenda and to enable the OAIC to report on privacy matters arising from the implementation and business as usual activities of Service Delivery Reform. The period of the MOU is 1 July 2012 to 30 June 2013. Previously, these matters were dealt with under two separate MOUs.

The OAIC received \$121,000 from the Department of Human Services in 2012–13.

Department of Health and Ageing Memorandum of Understanding — Healthcare Identifiers and Personally Controlled Electronic Health Records

The OAIC held a MOU with the Department of Health and Ageing to deliver an independent regulatory service in relation to the handling of Healthcare Identifiers and the operation of the Healthcare Identifiers (HI) Service as provided by the *Privacy Act 1988* (Privacy Act) and the *Healthcare Identifiers Act 2010* (HI Act). The MOU also provides for the delivery of an independent regulatory service in relation to the handling of personal information within the Personally Controlled Electronic Health Records system (eHealth system) as provided by the Privacy Act and *Personally Controlled Electronic Health Records Act 2012*.

Under this arrangement, the OAIC received \$517,925 for oversight of the HI Service and \$1,305,653 for oversight of the eHealth system in 2012–13.

Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education Memorandum of Understanding

The OAIC held an agreement with the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (DIICCS RTE) to provide dedicated privacy-related services, including the OAIC's appointment as independent privacy regulator of the Student Identifier Scheme.

The OAIC received \$125,250 from DIIS RTE for the provision of services in 2012–13.

Department of Finance and Deregulation Memorandum of Understanding

The OAIC held an MOU with the Department of Finance and Deregulation (Finance) for hosting the OAIC Blog on the Govspace website. The MOU commenced on 1 July 2012 and continues until terminated. The OAIC paid \$4950 for these services in 2012–13.



Appendix 6 — Speeches and presentations by Commissioners

Prof. John McMillan — Australian Information Commissioner

July 2012

- presentation to the Australian Institute of Administrative Law National Administrative Law Forum, Adelaide
- presentation to an Institute of Public Administration seminar, Canberra

August 2012

- presentation to a KPMG seminar, Sydney
- presentation to the Information and Privacy Commission NSW Conference, Sydney
- presentation to the International Congress on Archives 2012, Brisbane

September 2012

- presentation to the Department of Broadband, Communications and the Digital Economy, Canberra
- presentation to the Private Health Insurance Ombudsman Industry seminar, Melbourne
- presentation to the Parliamentary Issues Briefing, House of Representatives, Canberra
- presentation to the Australian Government Solicitor Administrative Law Forum, Canberra

October 2012

- presentation to the Eidos Institute National Conference, Canberra
- presentation to a Telecommunications Industry Ombudsman seminar, Melbourne
- presentation to the Gov2.0 Conference, Canberra

November 2012

- participation in panel session at the National Investigations Symposium, Sydney
- presentation to the 10th World Conference of the International Ombudsman Institute, Wellington, New Zealand

- presentation to an OAIC seminar to mark the 30th anniversary of the *Freedom of Information Act 1982*, Canberra
- presentation to the Australian Corporate Lawyers' Association, Canberra

December 2012

- presentation to an Australian Institute of Administrative Law seminar, Canberra

April 2013

- presentation to the Data Governance Conference, Canberra
- presentation to the Australian Computer Society, Canberra
- presentation to a University of NSW Law Faculty class, Sydney
- presentation to the Department of Prime Minister and Cabinet, Canberra
- presentation to the Legal Practice Managers' Forum, Canberra
- presentation at OAIC Privacy Awareness Week 2013 launch event, Sydney
- presentation to a McAfee Privacy Awareness Week Executive Roundtable, Canberra

May 2013

- presentation to the Department of Human Services, Canberra
- presentation to the National Scholarly Communication Forum, Canberra
- presentation to the Defence Materiel Organisation, Canberra
- after dinner address to the Institute of Public Administration Annual Report Awards Dinner, Canberra
- presentation to the APS Governance Forum, Canberra

June 2013

- participation in a leadership panel at GovCamp, Canberra

Timothy Pilgrim — Privacy Commissioner

November 2012

- presentation to the Medicare Local National Workshop e-training session, Sydney
- presentation to the Complaint Handlers Information Sharing and Liaison meeting, Sydney
- presentation to the Australian Retail Credit Association Roundtable, Sydney
- presentation to the International Association of Privacy Professionals Australia & New Zealand (iappANZ) conference, Sydney
- presentation to the Centre for Internet Safety/Commonwealth Bank seminar, Sydney
- presentation to the Association of Market and Social Research Organisations and the University of Sydney Business School, Sydney

March 2013

- presentation to the Communications and Media Law Association, Sydney
- presentation to the Price Waterhouse Coopers Roundtable, Sydney
- presentation to the Australian Corporate Lawyers' Association conference, Adelaide

April 2013

- presentation at OAIC Privacy Awareness Week 2013 launch event, Sydney
- presentation to the CEO International Forum, Sydney

May 2013

- presentation to a Privacy Awareness Week (iappANZ, McAfee and Corrs Chambers Westgarth) event, Brisbane
- presentation to a Privacy Awareness Week (iappANZ, Norton Rose and McAfee) event, Sydney
- presentation to a McAfee Privacy Awareness Week Executive Roundtable, Sydney
- presentation at the official launch of the Personal Data Protection Commission, Singapore
- presentation to an Australian Institute of Administrative Law seminar, Canberra

June 2013

- presentation to the Australian Communications and Media Authority, Sydney

James Popple — FOI Commissioner

July 2012

- presentation to the Australian Institute of Administrative Law conference, Adelaide

August 2012

- presentation to the Australian Government Leadership Network conference, Melbourne
- presentation to the Chartered Secretaries Australia Annual Public Sector Update, Canberra

September 2012

- presentation to the Security in Government Conference 2012, Canberra

November 2012

- presentation to the Second National Information Law Conference, Canberra
- presentation at an OAIC event to celebrate the 30th anniversary of the *Freedom of Information Act 1982*, Canberra

May 2013

- presentation to an Australian National University Law School class, Canberra
- presentation to the Records and Information Management Professionals Australasia breakfast seminar, Canberra
- presentation to an Australian National University Law School class, Canberra

June 2013

- presentation to the Advanced Military Law course, Australian National University, Canberra
- presentation to the Department of Regional Australia, Local Government, Arts and Sport, Canberra
- presentation to the Walkley Public Affairs Convention, Canberra

Appendix 7 — Committee members

Information Advisory Committee

The Information Advisory Committee (IAC) is established by the *Australian Information Commissioner Act 2010* (s 27). Members (other than the Chair) are appointed by the Minister.

The IAC assists and advises the Australian Information Commissioner in matters relating to the performance of the Information Commissioner functions. The IAC advises the Information Commissioner; it does not advise the Australian Government directly. The minutes of IAC meetings are published on the OAIC website.

As at 30 June 2013 the members were:

- Professor John McMillan, Australian Information Commissioner (Committee Chair)
- The Hon Dr John Bannon AO, Adjunct Professor of Law, University of Adelaide
- Ms Anita Brown, Trade Marks Attorney, Phillips Ormonde Fitzpatrick
- Ms Jenet Connell, Deputy Secretary, Department of Finance and Deregulation
- Ms Elizabeth Kelly, Deputy Secretary, Attorney-General's Department
- Ms Jill Lang, Consultant
- Mr Peter Lewis, Executive Producer, Landline ABC News, Brisbane
- Ms Su McCluskey, Chief Executive Officer of the Regional Australia Institute
- Ms Roxanne Missingham, University Librarian (Chief Scholarly Information Officer), Australian National University
- Mr Alan Noble, Engineering Director, Google Sydney
- Ms Kirstie Parker, Managing Editor, Koori Mail
- Mr Edward Santow, Chief Executive Officer, Public Interest Advocacy Centre
- Mr Michael Simpson, General Manager, Policy and Advocacy, Vision Australia.

Note: Ms Stephanie Foster, Deputy Secretary, Department of Regional Australia, Local Government, Arts and Sport ceased as a member in October 2012.

The Freedom of Information Commissioner and Privacy Commissioner participate in IAC meetings as observers.

Privacy Advisory Committee

The Privacy Advisory Committee (PAC) is established by the *Privacy Act 1988* (s 82). Members (other than the Chair) are appointed by the Governor-General.

The PAC provides strategic advice on privacy to the Australian Information Commissioner. The minutes of PAC meetings are published on the OAIC website.

As at 30 June 2013 the members were:

- Professor John McMillan, Australian Information Commissioner (Committee Chair)
- Mr Leon Carter, National Secretary, Financial Sector Union
- Professor Michael Kidd AM, Faculty of Health Sciences, Flinders University
- Dr Christine O’Keefe, Research Leader for Business and Services Analytics in CSIRO Mathematics, Informatics and Statistics
- Associate Professor Moira Paterson, Faculty of Law, Monash University
- Barbara Robertson, Chief Privacy Officer and Head of Governance, National Australia Bank
- Mr Richard Glenn, Assistant Secretary, Business and Information Law Branch, Attorney-General’s Department.

The Privacy Commissioner participates in PAC meetings as an observer.

Appendix 8 — Acronyms and abbreviations

AAT	Administrative Appeals Tribunal
AFP	Australian Federal Police
AGD	Attorney-General's Department
AGIMO	Australian Government Information Management Office
AHRC	Australian Human Rights Commission
AIAC	Association of Information Access Commissioners
ALRC	Australian Law Reform Commission
AMSRO	Association of Market and Social Research Organisations
ANAO	Australian National Audit Office
APEC	Asia Pacific Economic Cooperation
APPA	Asia Pacific Privacy Authorities
APP	Australian Privacy Principles
APRA	Australian Prudential Regulation Authority
APS	Australian Public Service
APVMA	Australian Pesticides and Veterinary Medicines Authority
ARCA	Australian Retail Credit Association
ASIC	Australian Securities and Investment Commission
ATO	Australian Taxation Office
AustLII	Australasian Legal Information Institute
BIS	Business Integrity Sites
BISC	Business Integrity Services Centre
CBP	Component Based Processing
CBPR	Cross-border Privacy Rules
CPEA	Cross-border Privacy Enforcement Arrangement
CRG	Commonwealth Reference Group on Identity Security
CSP	Carriage Service Providers
Customs	Australian Customs and Border Protection Service
DBCDE	Department of Broadband, Communications and the Digital Economy
DBN	Data Breach Notification
DFAT	Department of Foreign Affairs and Trade
DHS	Department of Human Services
DIAC	Department of Immigration and Citizenship

DIICCSRTE	Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education
DoHA	Department of Health and Ageing
DVA	Department of Veterans' Affairs
DVS	Document Verification Service
EL	Executive Level
EOI	Evidence of Identity
EU	European-Union
FOI	Freedom of information
GPEN	Global Privacy Enforcement Network
HPI-I	Healthcare Provider Identifiers — Individual
HPI-O	Healthcare Provider Identifiers — Organisations
IAC	Information Advisory Committee
ICDPPC	International Conference of Data Protection and Privacy Commissioners
ICON	Information Contact Officer Network
IHIs	Individual Healthcare Identifiers
IPP	Information Privacy Principles
IPS	Information Publication Scheme
JACS	ACT Justice and Community Safety Directorate
KPI	Key Performance Indicator
MOU	Memorandum of understanding
MRT	Migration Review Tribunal
NISS	National Identity Security Strategy
NISCG	National Identity Security Coordination Group
NPP	National Privacy Principles
OAIC	Office of the Australian Information Commissioner
OECD	Organisation for Economic Co-operation and Development
OGP	Open Government Partnership
OMI	Own motion investigation
PAA	Privacy Authorities Australia
PAC	Privacy Advisory Committee
PAW	Privacy Awareness Week
PCEHR	Personally Controlled Electronic Health Record
PIA	Privacy Impact Assessment
PID	Public Interest Determination
PM&C	Department of Prime Minister and Cabinet
PNR	Passenger Name Record
PSI	Public sector information

SDR	Service Delivery Reform
SES	Senior Executive Service
TFN	Tax File Number
TPP	Trans-Pacific Partnership
USI	Unique Student Identifier
VET	Vocational Education and Training
WCAG	Web Content Accessibility Guidelines
WHS	Workplace Health and Safety

Appendix 9 — List of requirements

Description	Requirement	Part of report
Letter of transmittal	Mandatory	Preliminary pages
Table of contents	Mandatory	Preliminary pages
Index	Mandatory	Index
Glossary	Mandatory	Appendix 8
Contact officer(s)	Mandatory	Preliminary pages
Internet home page address and Internet address for report	Mandatory	Preliminary pages
Review by Australian Information Commissioner		
Review by Australian Information Commissioner	Mandatory	Chapter 1
Summary of significant issues and developments	Suggested	Chapter 1
Overview of OAIC's performance and financial results	Suggested	Chapters 1 & 2, Appendix 1 & 2
Outlook for following year	Suggested	Chapter 1
Office of the Australian Information Commissioner overview		
Role and functions	Mandatory	Chapter 2
Organisational structure	Mandatory	Chapter 2
Outcome and program structure	Mandatory	Chapter 2
Where outcome and program structures differ from PB Statements/PAES or other portfolio statements accompanying any other additional appropriation bills (other portfolio statements), details of variation and reasons for change	Mandatory	Not applicable
Report on performance		
Review of performance during the year in relation to programs and contribution to outcomes	Mandatory	Chapter 2, Appendix 1
Actual performance in relation to deliverables and KPIs set out in PB Statements/PAES or other portfolio statements	Mandatory	Chapter 2
Where performance targets differ from the PBS/PAES, details of both former and new targets, and reasons for the change	Mandatory	Not applicable
Narrative discussion and analysis of performance	Mandatory	Chapter 1, Appendix 1 & 2

Description	Requirement	Part of report
Trend information	Mandatory	Chapters 1, and 5–9
Significant changes in nature of principal functions/ services	Suggested	Not applicable
Performance of purchaser/provider arrangements	If applicable, suggested	Not applicable
Factors, events or trends influencing OAIC performance	Suggested	Chapter 1
Contribution of risk management in achieving objectives	Suggested	Chapter 3
Social inclusion outcomes	If applicable, mandatory	Not applicable
Performance against service charter customer service standards, complaints data, and the OAIC's response to complaints	If applicable, mandatory	Chapter 1, 6 & 8
Discussion and analysis of the OAIC's financial performance	Mandatory	Chapter 1,
Discussion of any significant changes from the prior year, from budget or anticipated to have a significant impact on future operations.	Mandatory	Chapter 1
Agency resource statement and summary resource tables by outcomes	Mandatory	Appendix 1
Corporate governance		
Agency heads are required to certify that their agency comply with the Commonwealth Fraud Control Guidelines	Mandatory	Letter of transmittal
Statement of the main corporate governance practices in place	Mandatory	Chapter 3
Names of the senior executive and their responsibilities	Suggested	Chapter 2
Senior management committees and their roles	Suggested	Chapter 3
Corporate and operational planning and associated performance reporting and review	Suggested	Chapter 3
Approach adopted to identifying areas of significant financial or operational risk	Suggested	Chapter 3
Policy and practices on the establishment and maintenance of appropriate ethical standards	Suggested	Chapter 3
How nature and amount of remuneration for SES officers is determined	Suggested	Chapter 3
External scrutiny		
Significant developments in external scrutiny	Mandatory	Chapter 3
Judicial decisions and decisions of administrative tribunals	Mandatory	Chapter 3
Report by the Auditor-General, a Parliamentary Committee or the Commonwealth Ombudsman	Mandatory	Chapter 3

Description	Requirement	Part of report
Management of human resources		
Assessment of effectiveness in managing and developing human resources to achieve departmental objectives	Mandatory	Chapter 3
Workforce planning, staff turnover and retention	Suggested	Chapter 3
Impact and features of enterprise or collective agreements, individual flexibility arrangements (IFAs), determinations, common law contracts and AWAs	Suggested	Chapter 3
Training and development undertaken and its impact	Suggested	Chapter 3
Work health and safety performance	Suggested	Chapter 3
Productivity gains	Suggested	Chapter 3
Statistics on staffing	Mandatory	Chapter 3
Enterprise or collective agreements, IFAs, determinations, common law contracts and AWAs	Mandatory	Chapter 3
Performance pay	Mandatory	Chapter 3
Assets management		
Assessment of effectiveness of assets management	If applicable, mandatory	Not applicable
Purchasing		
Assessment of purchasing against core policies and principles	Mandatory	Chapter 3
Consultants		
The annual report must include a summary statement detailing the number of new consultancy services contracts let during the year; the total actual expenditure on all new consultancy contracts let during the year (inclusive of GST); the number of ongoing consultancy contracts that were active in the reporting year; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST). The annual report must include a statement noting that information on contracts and consultancies is available through the AusTender website.	Mandatory	Chapter 3
Australian National Audit Office access clauses		
Absence of provisions in contracts allowing access by the Auditor-General	Mandatory	Chapter 3
Exempt contracts		
Contracts exempt from the AusTender	Mandatory	Chapter 3
Financial Statements		
Financial statements	Mandatory	Appendix 1 & 2

Description	Requirement	Part of report
Other mandatory information		
Work health and safety (Schedule 2, Part 4 of the <i>Work Health and Safety Act 2011</i>)	Mandatory	Chapter 3
Advertising and Market Research (Section 311A of the <i>Commonwealth Electoral Act 1918</i>) and statement on advertising campaigns	Mandatory	Chapter 3
Ecologically sustainable development and environmental performance (Section 516A of the <i>Environment Protection and Biodiversity Conservation Act 1999</i>)	Mandatory	Chapter 3
Compliance with the agency's obligations under the <i>Carer Recognition Act 2010</i>	If applicable, mandatory	Not applicable
Grant programs	Mandatory	Chapter 3
Disability reporting – explicit and transparent reference to agency-level information available through other reporting mechanisms	Mandatory	Chapter 3
Information Publication Scheme statement	Mandatory	Appendix 3
Spatial reporting – expenditure by program between regional and non-regional Australia	If applicable, mandatory	Not applicable
Correction of material errors in previous annual report	If applicable, mandatory	Not applicable
Agency Resource Statements and Resources for Outcomes	Mandatory	Appendix 1 & 2
List of requirements	Mandatory	Appendix 9

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