



**Australian Government**

**Office of the Australian Information Commissioner**

An abstract graphic consisting of several overlapping, wavy bands of color in shades of purple, blue, orange, and yellow, set against a dark blue background.

# Annual Report 2013–14



Annual  
Report  
2013–14

ISSN 1839-5155



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Office of the Australian Information Commissioner

GPO Box 5218

Sydney NSW 2001

Telephone: 1300 363 992

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)



**Australian Government**

**Office of the Australian Information Commissioner**

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

Dear Attorney

I have pleasure in submitting to you, for presentation to the Parliament, the Office of the Australian Information Commissioner's (OAIC) Annual Report for the year ending 30 June 2014.

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* (AIC Act) requires the Information Commissioner to prepare an annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013* on the OAIC's operations, including a report on freedom of information matters (defined in section 31 of the AIC Act) and privacy matters (defined in section 32 of the AIC Act).

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 2014*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John McMillan', written in a cursive style.

Prof John McMillan  
Australian Information Commissioner

23 September 2014



# Contents

Message from the Australian Information Commissioner, Prof. John McMillan .....	ix
Message from the Freedom of Information Commissioner, James Popple .....	xiii
Message from the Privacy Commissioner, Timothy Pilgrim .....	xviii
OAIC Achievements .....	xxi
<b>Part A Corporate</b>	
Chapter One — Year in review .....	4
Chapter Two — Organisation overview .....	12
Chapter Three — Management and accountability .....	20
Chapter Four — Communication and engagement .....	30
<b>Part B Develop and implement information policy</b>	
Chapter Five — Develop and implement information policy .....	46
<b>Part C Promote and secure the protection of personal information</b>	
Chapter Six — Privacy policy and law reform .....	58
Chapter Seven — Privacy compliance .....	76
<b>Part D Promote and secure open government</b>	
Chapter Eight — Freedom of information policy and compliance .....	108
Chapter Nine — Agency freedom of information .....	126
<b>Appendices</b>	
Appendix One — Agency resource statement and resources for outcomes .....	162
Appendix Two — Financial statements 2013–14 .....	164
Appendix Three — Information Publication Scheme .....	199
Appendix Four — Agencies subject to the FOI Act as at 30 June 2014 .....	200
Appendix Five — Memorandums of Understanding .....	212
Appendix Six — Speeches and presentations by Commissioners .....	214
Appendix Seven — Committee members .....	219
Appendix Eight — Acronyms .....	221
Appendix Nine — List of requirements .....	224
Index .....	229

## Important information about this report

This Annual Report records the activities of the Office of the Australian Information Commissioner (OAIC) for 2013–14. 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 has not been published since 2010–11. The material previously published in such reports has been published in the OAIC Annual Report and on the OAIC website.

## Guide to the report

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

### **Chapter One — Year in review**

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

### **Chapter Two — Organisation overview**

This Chapter 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 of the OAIC.

### **Chapter Three — Management and accountability**

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

### **Chapter Four — Communication and engagement**

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

### **Chapter Five — Develop and implement information policy**

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

### **Chapter Six — Privacy policy and law reform**

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

### **Chapter Seven — Privacy compliance**

This Chapter 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 Eight — Freedom of information policy and compliance**

This Chapter 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 Nine — Agency freedom of information activity**

This Chapter 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.



## Contact officer

For enquiries about this report or for copies please contact:

Director Communications and Corporate  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

Telephone: + 61 2 9284 9800

Fax: + 61 2 9284 9666

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

Website: [www.oaic.gov.au](http://www.oaic.gov.au)

Enquiries line: 1300 363 992 (local call)

This report is also available free of charge on the Office of the Australian Information Commissioner (OAIC) website at [www.oaic.gov.au](http://www.oaic.gov.au).

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## Accessible formats

All OAIC publications can be made available in a range of accessible formats for people with disabilities. If you require assistance, please contact the OAIC.

## Message from the Australian Information Commissioner, Prof. John McMillan



This is expected to be the last annual report of the Office of the Australian Information Commissioner (OAIC). As discussed in this report, a Budget announcement in May 2014 foreshadowed that the OAIC would be disbanded by 31 December 2014 and new arrangements made for the exercise of the OAIC's privacy and freedom of information (FOI) functions.

OAIC Commissioners and staff acted promptly to acknowledge and implement the Government decision. We nevertheless have great pride in the OAIC's substantial record of achievement since it commenced on 1 November 2010. This is reflected in the activity of the last year, as recorded in this annual report.

An appropriate starting point is the OAIC's statistical record in privacy and FOI oversight in 2013–14. The OAIC handled an increased number of complaints and review applications, while also managing to raise the closure rate.

There was an increase of 183% in privacy complaints (from 1496 to 4239), matched by a 74% increase in matters completed (1504 to 2617). The average completion time for privacy complaints was reduced by 44% to an average of 86.7 days. The privacy workload also included a 30% increase in written enquiries (2455) a 9% increase in phone enquiries (11,737), a 16% increase in data breach notifications (71), and a 60% increase in privacy audits (8).

Applications for Information Commissioner review (IC review) of FOI decisions rose by 3%, from 507 to 524. More significant though was that the number of IC reviews completed this year jumped by 54% (from 419 to 646). The number of IC reviews on hand at the end of the reporting year decreased by 27% (from 447 to 325), and the oldest unacted IC review had been reduced from 206 to 40 days. The number of FOI complaints on hand fell by 56% (from 75 to 33).

The OAIC was delighted with this turnaround in individual case handling, occurring at time when OAIC budget-supported staffing had progressively declined from almost 80 Full-Time Equivalent (FTE) at 30 June 2011 to around 65 FTE at 30 June 2014. The success is built upon an active internal program over the last two years to explore and trial different methods for efficient case handling. Particular attention has been given to finalising older cases, the early assessment of new cases, and informal resolution through OAIC-led discussion and negotiation among the parties. The chief interest of nearly all complainants and applicants is to get a swift resolution of their matter in terms acceptable to them and with the least formality. Meeting this expectation has been at the forefront of OAIC case handling.

At the same time, we are aware that outcomes in individual cases can be valuable precedents that provide future guidance. Equal emphasis was accordingly given to this dimension of OAIC oversight work. There was, for example, a 10% increase in the number of published IC review decisions (89 to 98), and work was in train to raise

the rate of *Privacy Act 1988* (Privacy Act) determinations. The OAIC's experience and insights were also conveyed publicly in 20 new guideline items on privacy and FOI law, 133 policy advices to agencies and businesses, 17 submissions to government and other inquiries, 22 consultations on proposed legal and administrative reforms and 75 conference and seminar presentations by Commissioners.

The other major dimension of OAIC work is to influence and shape the culture of government, business and the community as regards the areas of information policy and practice for which the OAIC is responsible.

There was a heightened focus this year on privacy protection, because of the commencement in March 2014 of significant reforms to the Privacy Act. The changes aimed to modernise privacy law in response to developments in technology, data acquisition and management, domestic and global information flows, and heightened community privacy awareness and concern. The OAIC played a pivotal role in publicising the changes and providing expert guidance on legal principles and practical implementation steps.

We were delighted with the strong response we received across government, business and the community. They participated actively in OAIC consultations and were generally keen to change information handling practices to accord with the new rules and the OAIC's guidance.

The tenor of the government and business response was an express acknowledgement that the object in managing personal information is to move beyond a minimalist culture of legal compliance to a culture that regards personal information protection as both an important human rights endeavour and as good business sense. Enlightened administrative practice can be a more effective driver for change than regulator pressure.

There was ready acceptance also by government and business of another OAIC theme, drawn from the title to new Australian Privacy Principle 1, that entities must embrace 'Open and Transparent Management of Personal Information'. In a digital information age, privacy protection must shift from a traditional association with confidentiality and secrecy towards transparency about how personal information is handled, the choices available to consumers for sharing personal information with entities, and the privacy enhancing practices, procedures and systems adopted by entities.

This theme echoes an OAIC precept, that a pre-eminent challenge facing all organisations is to manage transparency. Obligations of security, privacy, secrecy and confidentiality can be vital, but are nevertheless relative and contingent — an outcome, not the starting point. This new focus upon managing transparency stems from many pressures that include the Australian Privacy Principles, the *Freedom of Information Act 1982* (FOI Act) (applying to government), service delivery trends in government and business, community expectations in an age of online engagement, the connection between open data and innovation, the exigencies of representative democracy, and the practical reality that information that is not properly managed and released proactively may reach the public domain by unlawful disclosure through insider release or external hacking.

Striking the right balance between confidentiality and transparency — between the right to privacy and the right to know — is no longer straightforward or two-dimensional. It is a balance to be struck at the intersection of law, policy, administration and technology.

That theme has also been at the centre of the OAIC's work on FOI and open government, following the reforms that accompanied the establishment of the OAIC in November 2010. Those reforms were built around three principles — simpler procedures for obtaining information upon request, information sharing through proactive release of information, and a presumption of openness and public engagement.

Opinions will differ from one instance to the next on whether a denial of access is justified, but the OAIC's general impression from its work in 2013–14 is that the FOI reform principles from 2010 are, on the whole, better understood and respected across government. We see this in many ways — the OAIC's greater success in resolving access disputes on terms agreeable to agencies and applicants; the range of documents published on disclosure logs and proactively released by agencies; agency take-up of the OAIC's messages on administrative access to supplement FOI access; and that, while the number of FOI access requests to agencies increased by 14% in 2013–14, the reported cost of FOI Act compliance was down by 7.5%.

The OAIC's information policy work provides an opportunity not only to reiterate core FOI and privacy themes, but to connect and unify them in a broader policy setting focussed on responsible information management. This has been another OAIC precept — the need for an integrated approach to open government, privacy protection and advanced information management.

Chapter Five of this report sets out the key information policy positions the OAIC promoted in 2013–14 — government information is a national resource; open access to government information should be the default position; open government is not just about open access and open data; agencies should embrace proactive release and administrative access; and nothing in the FOI Act restricts release of information.

Those positions have been articulated in a range of documents from 2010 to 2014, including an Issues Paper on *Towards an Australian Government Information Policy* (2010), an Issues Paper on *Understanding the Value of Public Sector Information in Australia* (2011), the *Principles on Open Public Sector Information* (2011) and a report on implementation of the Principles, *Open Public Sector Information: From Principles to Practice* (2013).

Three agency resource guides that build on those papers were released in 2013–14: *De-identification of data and information*, to encourage greater use and sharing of government information with appropriate safeguards; *Open data quick wins – getting the most out of agency publications*, to provide practical guidance on how agencies can convert agency publications into an open data format that supports re-use by others; and *Administrative access*, to encourage agencies to take a flexible approach to information release.

We were struck in 2013–14 by the frequent recognition in government reports of the importance of ensuring transparency and information sharing in the structure and processes of government, policy formulation, decision making and stimulating innovation. Examples include:

- The Report of the National Commission of Audit, *Towards Responsible Government* (March 2014) defined ten Principles of Good Government, including: **‘Be transparent and honest.** Transparency and honesty are fundamental to accountability. ... Transparency in government will better illuminate the choices we face and the decisions needed for the overall good of the nation.’
- The *Australian Public Service Big Data Strategy* (August 2013) defined six Big Data Principles, including: **‘Principle 1:** Data is a national asset. Data sets that government holds are a national asset and should be used for public good. Sharing this data ... will enhance the culture of engagement. ... **Principle 2:** Privacy by Design. Big data projects will incorporate “privacy by design” [in] data sharing. ... **Principle 3:** Enhancing open data. ... [A]gencies are encouraged to release information with the objective of outsourcing and encouraging innovation. Government agencies will approach big data analytics projects under the [OAIC] Principles on Open PSI [which] rest on the Gov 2.0 premise that PSI is a national resource that should be available and discoverable for community access and use.’
- The Australian National Audit Office *Better Practice Guide: Public Sector Governance* (June 2014) counsels that strong leaders can shape the success of organisations by focusing on three areas, one of which is: **‘Openness, transparency and integrity.** ... Appropriate levels of openness, transparency and integrity are required to ensure that stakeholders have confidence in public sector decision-making processes and actions.’
- The Productivity Commission *Annual Report 2012–13* (September 2013) contained a theme chapter, ‘Using administrative data to achieve better policy outcomes’, which noted that administrative data sets held by government agencies offer ‘a largely untapped opportunity to evaluate policies and programs and develop more effective and efficient ones’, and referred to the FOI Act objects clause declaring that information held by government is a national resource to be managed for public purposes.
- The *Review of the Personally Controlled Electronic Health Record* (PCEHR) (December 2013) noted that transparency and accountability are two of the seven governance principles for the National eHealth Strategy, and the Review made recommendations for strengthening those principles in the PCEHR governance arrangements.

In closing, it has been a pleasure along with Timothy Pilgrim and James Popple to lead the OAIC for nearly four years. We have been fortunate to have the support of committed, talented and energetic staff, many of whom joined us at the beginning and stayed throughout. We have enjoyed similarly strong support from the members of the Information Advisory Committee and the Privacy Advisory Committee, and from government agencies, private entities, civil society organisations and information activists and commentators. All shared our vision of an Australia where privacy and information access rights are respected and public sector information is managed in the public interest. We look to that vision being taken forward by others.

# Message from the Freedom of Information Commissioner, James Popple



The *Freedom of Information Act 1982* (FOI Act) commenced operation on 1 December 1982. On 1 November 2010 it was amended in the most significant way since it was first enacted. Those amendments made it simpler and cheaper for people to request access to government documents. The emphasis of the FOI Act shifted from a reactive model of disclosure in response to individual requests, to a proactive model of publication of public sector information.

The guiding principle underlying the amended FOI Act is that information held by the Government is to be managed for public purposes, and is a national resource.

At the same time that these reforms commenced, the Office of the Australian Information Commissioner (OAIC) was established. One of the OAIC's functions is to oversee the operation of the FOI Act. On 13 May 2014, the Australian Government announced that it intends to disband the OAIC. From 1 January 2015, the OAIC's Freedom of Information (FOI) merits review function will be transferred to the Administrative Appeals Tribunal (AAT); the AAT will be the first avenue of external merits review of FOI decisions, as it was prior to the 2010 reforms. The Commonwealth Ombudsman will resume sole responsibility for investigating FOI complaints. The Attorney-General's Department will take on the OAIC's function of issuing FOI guidance material for agencies and collecting and collating FOI statistics.

Data is now available for three full financial years (plus the first eight months) of the OAIC's operations. So, in addition to considering activity across the FOI system in 2013–14, this is an opportunity to reflect on the operation of the FOI Act since the 2010 reforms, and on how the OAIC has performed in the exercise of its FOI functions during that period.

## Activity across the FOI system in 2013–14

### *Requests for access to documents*

- In 2013–14, Australian Government ministers and agencies received 28,463 FOI requests (up 14.1% on the previous year). 70.2% of all requests were received by three agencies: the Department of Immigration and Border Protection (DIBP), the Department of Human Services and the Department of Veterans' Affairs
- The number of requests for personal information increased by 14.4%. These were 79.7% of all requests
- The number of requests for other than personal information increased by 12.8%.

### *Practical refusal/request consultation processes*

- Agencies sent 124.7% more notices of intention to refuse a request because a 'practical refusal reason' existed, and 67.1% of those requests were subsequently refused or withdrawn (up 24.4%).

### *Determination of FOI requests*

- Agencies and ministers determined 23,106 requests (up 6.2%)
- Access was granted, in full or in part, in 86.7% of all requests determined (down 2.7%)
- One or more exemptions were claimed in 51.3% of all requests determined (down 4.0%). The most-claimed exemption is still the personal privacy exemption (in 20.6% of all requests determined).

### *Timeliness*

- 95.8% of all requests determined were processed within the applicable statutory time period (up 10.2%)
- 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 44.4%. This suggests that some agencies are continuing to find it hard to meet their FOI obligations within their existing resources.

### *Amendment applications*

- Eight agencies received 2891 applications for amendment of personal records (up 1.3%), and one agency (DIBP) received 98.9% of them
- Agencies determined 3303 amendment applications (up 14.2%). A decision to amend or annotate a person's personal record was made in response to 68.1% of applications (down 4.8%).

### *Internal review*

- Agencies made 542 decisions on internal review (up 11.8%), and affirmed the original decision in 54.8% of those reviews (up 6.8%).

### *Cost and charges*

- The reported cost attributable to agency compliance with the FOI Act was \$41.837 million (down 7.5%)
- Agencies recovered \$239,628 in FOI charges. This is 0.6% of the total cost.

### *The OAIC's FOI activity*

In 2013–14, the OAIC:

- received 524 applications for Information Commissioner review (IC review) (up 3.4%) and closed 646 (up 54.2%)
- received 77 FOI complaints (down 48.0%) and closed 119 (down 20.1%)
- processed 2456 extension of time requests and notifications (up 7.2%).

Wherever possible, the OAIC aims to conciliate IC reviews. Of the IC reviews closed in 2013–14, 98 (15.2%) were concluded through published decisions by one of the three Commissioners, because conciliation was not possible. Ministers' and agencies' decisions were affirmed in 40.1% of those decisions, and set aside or varied in the remainder.

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, in 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 effect of the 2010 reforms*

It is now possible to see the impact of the 2010 reforms upon the FOI landscape:

- The number of FOI requests increased. Between 2009–10 (the last full year before the reforms) and 2013–14 the number of FOI requests made to Australian Government agencies and ministers increased by 31.9%: from 21,587 to 28,463. Over those four years there was a 108.9% increase in requests for information other than personal information. These requests are typically more complex to finalise than requests for personal information
- The number of applications for external merits review increased greatly. In 2009–10, the AAT received 110 applications for review of FOI decisions. In 2011–12 (the first full year after the reforms), the OAIC received 456 applications for review; in 2013–14, it received 524 applications — increases of 314.5% and 376.4%, respectively, over the 2009–10 number. No doubt the principal reason for this increasing use of external merits review of FOI decisions was the reduction in cost to applicants. In 2009–10, the AAT's application fee was \$682; there has been no application fee for review by the OAIC
- The number of FOI complaints fluctuated. In 2009–10, the Commonwealth Ombudsman received 137 FOI complaints. In 2011–12, the OAIC and the Ombudsman together received 171 complaints; in 2013–14, they together received 127 complaints — an increase of 24.8% and a decrease of 7.3%, respectively, over the 2009–10 number
- The cost to government increased. Between 2009–10 and 2013–14 the cost that agencies attributed to the FOI Act increased from \$27.5 million to \$41.8 million, an increase of 52.2% over four years.

## The OAIC's FOI activity since its establishment

### *IC reviews*

Between 1 November 2010 and 30 June 2014, the OAIC received 1663 applications for IC review and finalised 1347 or 81.0% of them. In its first twenty months of operation, the OAIC received significantly more applications for IC review than it finalised, resulting in a backlog. But the rate of finalisation improved with each reporting year until, in 2013–14, the OAIC finalised 23.3% more IC reviews than it received. As at 30 June 2013 the oldest unactioned IC review was 206 days old; as at 30 June 2014, the oldest such matter was 40 days old.



### *FOI complaints*

Between 1 November 2010 and 30 June 2014, the OAIC received 439 FOI complaints and finalised 407 (or 92.7%) of them. In finalising complaints, the OAIC has made many recommendations, including 10 formal recommendations under s 86 of the FOI Act, for agency action. The OAIC also undertook an own motion investigation of the FOI processes of one agency. As it did with IC reviews, the OAIC received more FOI complaints than it finalised in its first twenty months of operation. But the rate of finalisation improved and the OAIC reached the tipping point (finalising more FOI complaints than were received) in 2012–13.

### *Other OAIC FOI activity*

Between 1 November 2010 and 30 June 2014, in addition to this FOI review and complaint handling activity, the OAIC:

- received and finalised 8028 requests for, or notifications of, extensions of time
- declared six times that a person was a vexatious applicant under s 89K of the FOI Act
- made and renewed a disclosure log determination under s 11C(2) of the FOI Act
- published and updated clear and comprehensive FOI guidelines (250 pages), 16 fact sheets for the public, and over 30 detailed agency resources on processing times, calculating charges, administrative access, third party objections, anonymous requests, statements of reasons, redaction, FOI training, website publication, disclosure logs, sample letters and frequently asked questions
- responded to 4758 phone enquiries and 1985 written enquiries about FOI
- conducted a public consultation on FOI charges and prepared a lengthy report to Government in 2012
- made two substantial submissions to the Hawke review of the FOI Act and the *Australian Information Commissioner Act 2010*
- held 13 meetings of the Information Contact Officers Network, a forum for FOI and privacy officers across all agencies
- provided 35 FOI reform training courses for Australian Government agencies and the Norfolk Island Administration.

### *Delay*

The OAIC has been criticised for delays in its FOI processing, especially in finalising IC reviews. This criticism was valid for the first couple of years of the OAIC's operations. But, as noted above, there was a significant improvement in the OAIC's processing of IC reviews in each of 2012–13 and 2013–14. During the reporting period, the OAIC finalised 71.5% of IC reviews within 12 months of receiving them: 24.4% were open for fewer than 90 days; 16.8% were open for 91–180 days; 30.2% were open for 181–365 days.

There is, of course, still room for improvement. But these figures demonstrate that delay is no longer a significant issue. The OAIC is now processing FOI matters in a timely way. Inevitably, since the announcement of the impending disbandment of the OAIC, many OAIC staff have already obtained employment elsewhere. In its last few months, the OAIC will not be able to maintain the high level of productivity that it has attained over the last 12.

## The future

The information presented in this Annual Report reflects continuing high levels of activity across all parts of the FOI system in 2013–14. That system generally performed well, and the OAIC has performed its FOI functions very well.

As at the end of the reporting period, the Government had not announced any changes to the FOI Act beyond those required to disband the OAIC and transfer responsibility for its FOI functions to other bodies. The OAIC has recommended a number of changes (detailed in its previous annual report) that would improve the FOI system as a whole, 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



12 March 2014 saw the commencement of the reforms to the *Privacy Act 1988* (Privacy Act), the culmination of the Review of the Privacy Act commenced by the Australian Law Reform Commission in 2006.

The successful implementation of these reforms was the result of excellent work by a committed and dedicated team of people within the Office of the Australian Information Commission (OAIC). As a result of their work, prior to the commencement of the reforms, the OAIC had released a series of materials designed to assist entities covered by the Privacy Act to comply with their responsibilities, including a comprehensive set of *Australian Privacy Principles guidelines* (APP guidelines), a series of fact sheets and the updating of a number of existing materials to reflect the changes to the Privacy Act. As well, the OAIC worked closely with industry to develop and subsequently approve the Credit Reporting Code, necessary to allow for the operation of the Credit Reporting provisions of the Privacy Act. The success of these processes was also due to a collaborative and consultative approach, working closely with those entities covered by the Privacy Act as well as civil society, intended to ensure that the material produced would be relevant and easily understood.

In the lead up to the commencement of the new provisions, and in the first few months of their operation, I have been heartened by the positive way in which entities have worked to ensure compliance. Regulatory reform of this size and complexity does by its nature result in implementation costs and an increased risk of adverse events. However, from my many meetings, particularly with large private sector organisations, I was reassured by the acknowledgment that while the implementation of these changes was a significant challenge, the benefits to organisations from the perspective of enhancing customer relationships were clearly visible.

During the year, the focus on the reforms, particularly through the media, raised awareness and acted as a reminder to the broader community of their privacy rights. This has been reflected in a marked increase in the number of people coming to the OAIC with privacy related enquiries and complaints. During the financial year, the OAIC experienced an almost 10% increase in the number of privacy phone enquiries received, a 30% increase in the number of privacy written enquiries received and a hefty 183% increase in the number of privacy complaints. With regards to the increase of complaints, it was notable that for the first time two large data breaches resulted in a significant number of individual complaints being lodged with the OAIC about each matter.

Community awareness of, and concern with, their privacy remains a constant as was reflected in the results of the OAIC's 2013 Community Attitudes to Privacy survey. The Survey results showed a community that, rather than accepting the view of some commentators that the online world removes any possibility for privacy, looks for ways to control what happens to their personal information. In that respect, a key finding of the Survey was that 63% of respondents had decided not to deal with an organisation or

government agency because of concerns for how their personal information would be handled. Similarly the vast majority of Australians, 96%, believe that organisations and government agencies need to be transparent about how they are going to handle their personal information. This issue continues to be a challenge for entities covered by the Privacy Act as 51% of people also reported that they do not read privacy policies. The OAIC will focus on how to assist entities to make their privacy policies more accessible.

A further positive trend identified during the year was an increase in the number of voluntary data breach notifications. In line with the OAIC's voluntary data breach notification guidelines, a greater number of entities chose to notify the OAIC of a data breach incident. A total of 71 notifications were made, an increase of 16%. It is pleasing to see that an increasing number of entities recognised the benefits in notifying not just the OAIC but also their clients. In appropriate cases, notification can assist people to take further steps to secure their personal information following a breach and thereby limit any potential harm that could occur. Notification also demonstrates that an entity respects their customers' personal information and thereby strengthens the trust equation in the relationship.

Correspondingly, there were fewer occasions whereby I was required to commence a Commissioner initiated investigation (CII). CIIs are usually commenced when the OAIC becomes aware of a data breach through a third party rather than the affected organisation. The OAIC will continue to monitor these trends to assess whether there is a positive change in the privacy practices of entities covered by the Privacy Act.

Given that the reforms also included enhancements to the regulatory powers available to the Commissioners, the Australian Information Commissioner and myself issued a joint statement on how we would undertake our regulatory role in the new environment. To build on that statement, the OAIC has started developing a Regulatory Action Policy and accompanying Guide. These materials will further clarify how the OAIC will use these enhanced regulatory powers. The guiding principle for this guidance is that the OAIC will work with entities in the first instance to ensure good privacy practices. This is a long standing policy of both the OAIC and the former Office of the Privacy Commissioner. Consequently, our compliance focus in the months following March 2014 was to work with entities to ensure that they understand the new requirements and have the systems in place to meet them.

The future regulation of privacy in Australia will go through yet another change. As part of the announcement in the Budget that the OAIC would be disbanded, the Government also announced that an Office of the Privacy Commissioner would be established. I am confident that the importance that the community places in the protection of their personal information will be reflected in the regulatory approach of the new Office of the Privacy Commissioner, and in the work of a committed and dedicated team of colleagues.



## OAIC Achievements

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Since its commencement in November 2010, the Office of the Australian Information Commissioner (OAIC) has been highly successful in protecting the community's information rights and the advancement of information policy within government.

Below are a number of the OAIC's achievements.

### Information Policy

- Published the *Principles on open public sector information* (2011) (Open PSI Principles) that are widely referred to across government
- Published two reports that promote Open PSI and the development of a national information policy — *Towards a national information policy* (2010) and *Understanding the value of public sector information in Australia* (2011)
- Conducted a survey and published two reports of the information management practices of 191 Australian Government agencies regarding their compliance with the FOI Act Information Publication Scheme and the OAIC's Open PSI Principles — *Information publication scheme: survey of Australian Government agencies* (2012), and *Open public sector information: from principles to practice* (2013)
- Promoted key information policy concepts that now have a defining influence in government agency information practices, including that government information is a national asset to be used for public purposes, and concepts of 'public sector information', 'open data' and 'proactive disclosure'
- Hosted a National Information Policy Conference (2011) attended by over 300 people
- Liaised with other government agencies to build a strong interagency network for coordinating information policy developments.

### Freedom of Information

- Resolved 1345 applications for Information Commissioner review (between 1 November 2010 and 30 June 2014), publishing reasons for decision in 199 of those cases
- Closed 406 Freedom of Information (FOI) complaints
- Dealt with 1313 applications for an extension of FOI processing time for complex and voluminous FOI requests
- Dealt with 4758 phone enquiries and 1985 written enquiries about FOI
- Conducted an own motion investigation into administration of sensitive and high profile FOI requests to the Department of Immigration and Citizenship
- Provided 35 FOI reform training courses for Australian Government agencies and the Norfolk Island Administration

- Published clear and comprehensive FOI guidelines (250 pages), 16 Fact Sheets for the public, and over 30 detailed agency resources on processing times, calculating charges, administrative access, third party objections, anonymous requests, statements of reasons, redaction, FOI training, website publication, disclosure logs, sample letters and frequently asked questions
- Conducted a public consultation on FOI charges and prepared a lengthy report to Government in 2012
- Made two substantial submissions to the review of the FOI Act by Dr Allan Hawke AC in 2013 (many of the OAIC's reform proposals were endorsed by the Review)
- Promoted the ideals of transparency, accountability, participation and better decision-making that underlie the FOI Act
- Celebrated the 30th Anniversary of the FOI Act with an event held at the National Portrait Gallery, Canberra. The event was attended by staff from both public and private sector bodies as well as members of the public.

## Privacy

- Closed 6278 privacy complaints
- Dealt with 36,960 phone enquiries and 6391 written enquiries about privacy
- Conducted 137 own motion investigations and 14 audits
- Received 213 data breach notifications
- Implemented substantial changes to the *Privacy Act 1988* (the Privacy Act) that commenced on 12 March 2014, by undertaking or commencing preparation of nearly fifty legislative instruments, codes (including a comprehensive Credit Code), guideline statements and information sheets, and conducting an extensive public consultation process (receiving more than 90 public submissions on draft guidelines)
- Published guidance on emerging privacy issues, including *Data Breach Notification Guidelines* (2012), *Privacy business resource 4: De-identification of data and information* (2014), a *Guide to Information Security* (2013) and *Mobile privacy: a better practice guide for mobile app developers* (2013)
- Conducted and published the results of a Community Attitudes to Privacy survey (2013)
- Annually hosted Privacy Awareness Week, and arranged participation by government agencies and private sector bodies (over 200 in 2014)
- Administered the Asia Pacific Privacy Authorities Forum, that includes members from the United States, Mexico, Hong Kong, South Korea, Canada, New Zealand and Singapore

- Participated in global forums that aim to build a coordinated approach to regulating crossborder data flows and challenges, including the Global Privacy Enforcement Network under the auspices of the OECD, and the APEC Cross Border Privacy Enforcement Arrangement.

## **Corporate, public relations and community engagement**

- Established an integrated office and scheme for managing freedom of information, privacy and information policy advice
- Hosted regular meetings of the Information Contact Officers Network for agency FOI and privacy officers, attended by approximately 130 agency staff on each occasion
- Convened the Information Advisory Committee and the Privacy Advisory Committee, that comprise senior government officers and external representatives with experience in archives, libraries, journalism, banking, medicine, trade unions, copyright law, information technology, disability access and community services
- Managed a dynamic website that receives up to 1.5 million visits annually
- Provided policy advice to agencies or organisations on 932 occasions, made 111 submissions to inquiries and undertook 128 consultations
- Made more than 270 keynote speeches and presentations to public conferences and in-house agency and business seminars, on open government and privacy protection.





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# Part A Corporate



# Chapter One

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## Year in review

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Achievements and challenges in 2013–14	4
Information Policy	5
Privacy	6
Freedom of Information	7
Financial performance	8
Outlook	8



## 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 pre-eminent feature of the OAIC is that it integrates three functions — protecting the community's right of access to documents under the *Freedom of Information Act 1982* (FOI Act), ensuring proper handling of personal information in accordance with the standards of the *Privacy Act 1988* (Privacy Act), and providing advice to government on information policy and practice. Those functions cast the OAIC in the roles of regulator, decision maker, adviser, researcher and educator.

A key challenge since the establishment of the OAIC has been the integration of these functions and roles. In 2013–14, the OAIC demonstrated how these functions and roles can be performed effectively by the one office, and the significant benefits that an integrated model can deliver.

### Achievements and challenges in 2013–14

The OAIC's workload continued to grow in 2013–14. This has been the trend since the establishment of the OAIC, and 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.

In 2013–14 the OAIC:

- handled 16,491 phone enquiries (down 9.4% on the previous year)
- answered 3,789 written enquiries (up 20.6%)
- resolved 2617 privacy complaints (up 74%)
- handled 71 data breach notifications (up 16.4%)
- resolved 646 applications for Information Commissioner review (IC review) (up 54.2%)
- resolved 119 freedom of information (FOI) complaints (down 20.1%)
- processed 2456 extension of time notifications and requests.

A key workload challenge facing the OAIC during the year was to address an existing backlog of FOI and privacy complaints and IC reviews, while tackling an increase in privacy complaints and IC reviews. The OAIC was successful on both fronts, as discussed in Chapters Seven and Eight of this report.

All new complaints and review applications underwent triage and early resolution assessment. This was an effective strategy in resolving a majority of new matters at an early stage, while escalating complex and sensitive matters for further review and priority handling if necessary. Additional resources were directed to finalising older matters.

Another significant workload challenge for the OAIC in 2013–14 was to implement the substantial changes to the Privacy Act that commenced on 12 March 2014. There was strong government, private sector and community interest in these changes. All looked to the OAIC to provide guidance, assistance and leadership in promoting the changes. As part of a national education campaign, the OAIC conducted 22 consultations, provided 133 written policy advices, made 17 submissions to government and other inquiries, and updated existing guidance material and produced over 20 new publications on FOI, privacy and information policy.

These workload challenges were met during a decrease in the OAIC's overall staffing levels, partly due to budgetary tightening across government. 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 2013–14 the staffing level was closer to 77.55 staff. The OAIC did not receive additional resources for privacy reform implementation.

The OAIC continued to feature prominently in media coverage about FOI review decisions, privacy law reform, data breaches and investigations; the OAIC coordinated a national Privacy Awareness Week campaign; and the Commissioners delivered 75 presentations at a range of forums and conferences.

## Information Policy

In 2013–14, the OAIC continued to engage actively on information policy and open government initiatives, both through issuing guidance material for agencies and through collaborating with other agencies and open government advocates.

During the reporting period, the OAIC continued to work with Government agencies to embed the open public sector information principles and to strengthen links between information policy and the OAIC's other functions — privacy and FOI. For example, in 2013–14 the OAIC participated in the development of the *Australian Public Service Big Data Strategy*, which is aligned with key open government principles while emphasising the importance of privacy protection in data sharing and release.

In April 2014, the OAIC published a resource for agencies on de-identifying data to encourage greater use and sharing of government information, with appropriate safeguards for privacy — *Information policy agency resource 1: De-identification of data and information*. The OAIC also published *Information Policy agency resource 2: Open data quick wins — getting the most out of agency publications*.

The OAIC continued to promote administrative access to government information as an alternative to the more formal FOI Act request process. A new and revised administrative access resource sheet for agencies was published. This promoted a flexible approach to information release that was compatible with both the FOI Act and changes to the Privacy Act on access to personal information. The Information Commissioner also re-issued *Disclosure Log Determination No 2013–1 (Exempt documents)*, which strikes a balance between providing access upon request under the FOI Act, while not being required to publish documents on the agency disclosure log in special circumstances.

Throughout 2013–14, the OAIC was an active participant in a range of forums that considered open government developments. These included the Big Data Strategy Group; the Cross-Jurisdictional Chief Information Officers' Committee (CJCIOC) in relation to the implementation of the Australian Governments Open Access and Licensing (AusGOAL) Framework; the Data Sharing Efficiency Working Group established by the Secretaries Board to enhance the Australian Government's capacity to use and share data; and the Crisp Revisited Reference Group which provided input to a review of Australia's national statistical system.

The Information Advisory Committee continued to provide support to the Australian Information Commissioner on a range of information policy issues.

## Privacy

In 2013–14, the OAIC received 4239 privacy complaints, an increase of 183.3% over the 1496 received in 2012–13. Additionally, the OAIC received 71 voluntary data breach notifications (up 16.4%). Six 'Commissioner initiated investigations' (previously named 'own motion investigations') were commenced and work was undertaken on 13 assessments (previously known as audits). The OAIC responded to 14,192 phone and written enquiries.

A key focus in OAIC privacy work was providing advice to agencies and organisations to assist them to understand their Privacy Act obligations following the commencement of the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* on 12 March 2014. The OAIC delivered a comprehensive campaign about the reforms, regularly communicating the changes to stakeholder groups via the OAIC's website, stakeholder networks, social media, publications and events.

The OAIC produced an extensive range of guidelines and legislative instruments to assist agencies, organisations and the public to understand their privacy obligations and rights. In February 2014, the OAIC released a final version of its *Australian Privacy Principles guidelines*. The OAIC also released guidance on developing Australian Privacy Principle privacy policies, privacy public interest determinations and external dispute resolution schemes. The OAIC published a series of 15 fact sheets about credit reporting, called *Credit reporting: Know your rights*, developed a number of legislative instruments and registered the *Privacy (Credit Reporting) Code*.

The 2013–14 reporting year was the second year of operation of the Personally Controlled Electronic Health Record (PCEHR) system, established under the *Personally Controlled Electronic Health Records Act 2012*. The OAIC's eHealth activities were carried out under a Memorandum of Understanding with the Department of Health and included commencing five audits, contributing to the review of the PCEHR system and reviewing and developing guidance materials for a range of audiences.

Throughout the year the OAIC responded to specific privacy enquiries from Australian Government and Australian Capital Territory Government agencies, private sector bodies and individuals. A selection of these policy advices is described in Chapter Six.

The OAIC also continued to participate actively in international privacy and data protection forums. This enables the OAIC to build collaborative relationships with other privacy regulators and to keep abreast of emerging international privacy protection issues. Chapter Six sets out some of the specific interactions the OAIC had with these forums during 2013–14.

A significant achievement in 2013–14 was the publication of the results of the Community Attitudes to Privacy survey. The results confirmed that Australians are becoming more concerned about privacy and that they expect their personal information to be properly protected by government and industry. The OAIC also coordinated another highly successful national Privacy Awareness Week, with over 200 partners joining the OAIC in awareness-raising activities during the week.

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.

## Freedom of Information

2013–14 was the third full year of operation for the reforms to the FOI Act that commenced in November 2010. The 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 finalising 646 applications for IC review (up 54.2% on 2012–13) and 119 FOI complaints (down 20.1%, due to a drop in FOI complaints received), processing 2456 extension of time requests and notifications (up 7.2%) and responding to 1903 phone and written enquiries.

During 2013–14, the OAIC significantly reduced the backlog of FOI reviews and complaints that existed at the start of the reporting year. At the beginning of 2013–14, the oldest un-actioned IC review application was 206 days old. At the end of the year, the oldest such matter was 40 days old. The number of IC reviews on hand was reduced by more than 100.



The OAIC provided a range of advice on FOI matters, including updating eight of the 15 parts of the *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* 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.

The OAIC published other guidance material including a new FOI agency resource on third party review rights, and answers to commonly asked agency questions about: how agency websites should explain the FOI Act and other access to information procedures, structuring Commonwealth contracts to comply with the FOI Act, and applying for the Information Commissioner to issue an Information Publication Scheme or disclosure log determination.

On 31 October 2012, the then Attorney-General announced that Dr Allan Hawke AC would undertake a review of the FOI Act and the AIC Act. In the previous reporting period, the OAIC provided two submissions addressing matters raised in the terms of reference and making 35 proposals for reform. The Hawke review was tabled in August 2013 and contained 40 recommendations, some agreeing with the Commissioners' proposals. In October 2013 the Commissioners wrote to the Attorney-General, supporting some of Dr Hawke's recommendations and suggesting alternatives to others.

## Financial performance

The Australian National Audit Office provided an unqualified audit opinion on the OAIC's financial statements for 2013–14.

## Outlook

### Australian Government budget decision

On 13 May 2014, the Australian Government announced that the OAIC will be disbanded from 31 December 2014. The Privacy Commissioner will continue to exercise functions under the Privacy Act, supported by staff in an office based in Sydney. The OAIC's FOI functions will be exercised by the Attorney-General's Department (advice, guidelines, annual reporting), the Administrative Appeals Tribunal (merits review) and the Commonwealth Ombudsman (complaints). The information policy advice function currently discharged by the OAIC will cease.

The Australian Information Commissioner, Freedom of Information Commissioner and Privacy Commissioner issued a statement on the same day as the Australian Government's announcement. The statement noted that the OAIC is committed to ensuring that the FOI Act and the Privacy Act continue to operate effectively prior to 1 January 2015 and that a smooth transition to the new arrangements will occur. The statement also referenced the substantial achievements of the OAIC since it commenced operations on 1 November 2010. A list of OAIC achievements appears at page xxi.

From 1 January 2015, the OAIC's website will be archived according to national archive requirements and will be available on the National Library of Australia Pandora website and Australian Government Web Archive, among other web archive resources. Content published on the OAIC website relating to the OAIC's FOI and information policy functions will also be transferred to a number of departments and agencies (including the Attorney-General's Department, the Commonwealth Ombudsman, the Administrative Appeals Tribunal and the Departments of Finance and Communications). This content may be adapted and published on the websites of those departments and agencies.

Content relating to the OAIC's privacy functions will be updated and retained on a website of the new Office of the Privacy Commissioner ([www.privacy.gov.au](http://www.privacy.gov.au)). The OAIC's Information Contact Officer Network will continue as the Privacy Contact Officer Network, and a number of the OAIC's communication channels (including e-newsletters and social media channels) will be rebranded for the new office.

### The new Office of the Privacy Commissioner

It is certain that 2014–15 will be a busy, challenging and rewarding year in the area of privacy protection. The new Office of the Privacy Commissioner will operate in an environment of increasing demand and reduced resources. The financial environment continues to be tight and it is expected to remain so over the next few budget cycles.

The new Office of the Privacy Commissioner has many challenges and opportunities ahead in 2014–15, particularly in establishing the new office and continuing the implementation of privacy law reform, including the exercise of additional functions and powers of the Privacy Commissioner.



# Chapter Two

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## Organisation overview

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Role	12
Functions	12
Commissioners	13
Organisation structure	13
Outcome and programme structure	15



## 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.

On 13 May 2014, the Australian Government announced as part of the 2014–15 Budget that the OAIC will be disbanded from 31 December 2014.

The *Privacy Act 1988* (Privacy Act) will continue to be administered by the Privacy Commissioner and supporting staff from an office based in Sydney. OAIC functions under the *Freedom of Information Act 1982* (FOI Act) will be administered jointly by the Attorney-General's Department, the Administrative Appeals Tribunal and the Commonwealth Ombudsman. The information policy advice function currently discharged by the OAIC will cease. See Chapter One for more information about the Australian Government's decision.

### Functions

The three main functions of the OAIC are:

- Information Commissioner functions — providing strategic advice on information policy and practice in the Australian Government
- privacy functions — ensuring proper handling of personal information in accordance with the Privacy Act and other legislation
- freedom of information functions — protecting the public's right of access to documents under the FOI Act.

The OAIC carries out a range of activities in these three core areas, including monitoring statutory compliance, investigations, assessments, 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 AO

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.

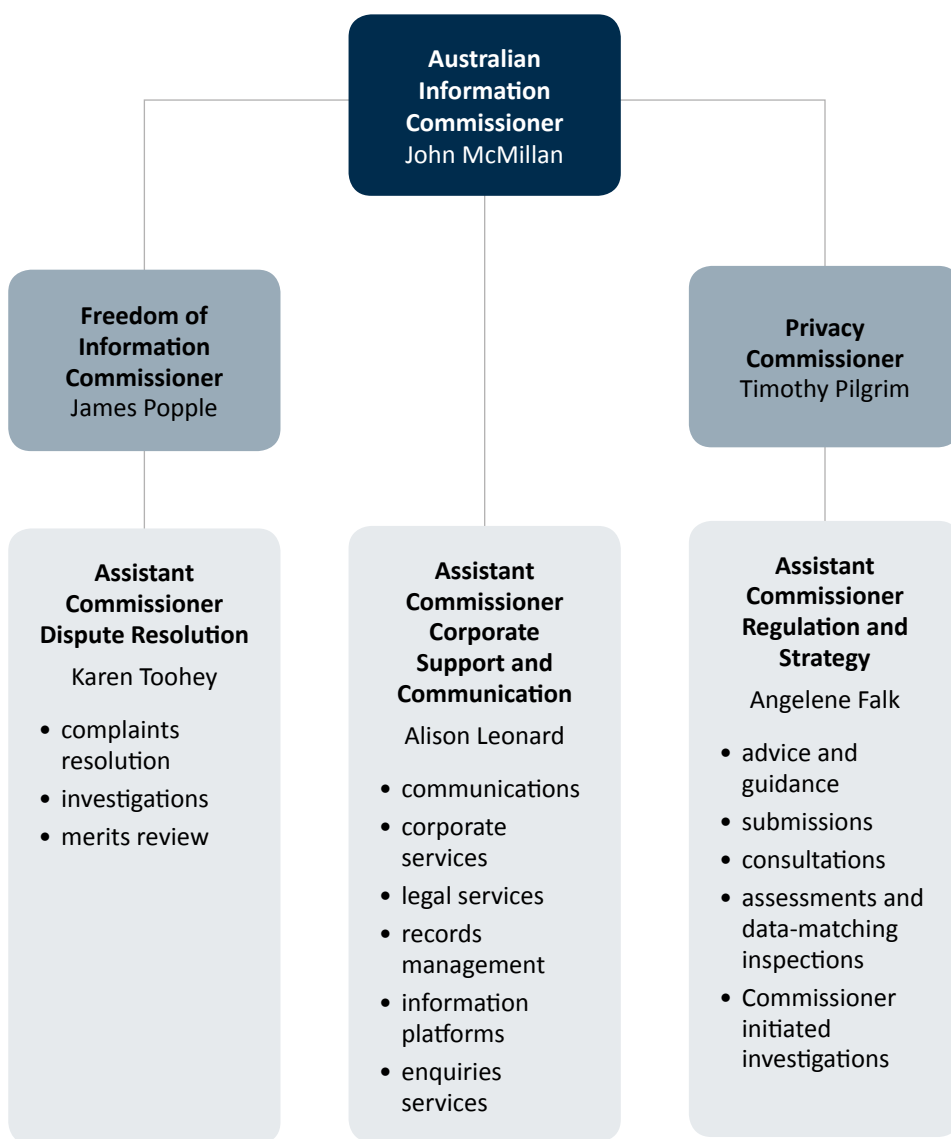
## Organisation structure

The OAIC is located in Sydney and Canberra and has three branches that each undertake work in relation to the OAIC's three functions of information policy, privacy and FOI.

The 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 Commissioner initiated investigations (CIIs) and performance assessments
- Dispute Resolution Branch — carries out complaint resolution, investigations and FOI 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 2014





The OAIC Executive. From left to right: Alison Leonard (Assistant Commissioner, Corporate Support and Communication), James Popple (FOI Commissioner), John McMillan (Australian Information Commissioner), Timothy Pilgrim (Privacy Commissioner), Karen Toohey (Assistant Commissioner, Dispute Resolution), Angelene Falk (Assistant Commissioner, Regulation and Strategy).

## **Outcome and programme structure**

The OAIC had one outcome for 2013–14: 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 the strategic goals of:

- 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 programme (Programme 1.1) related to the outcome: complaint handling, compliance and monitoring, and education and promotion.



The OAIC's programme objectives for 2013–14 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 to review their compliance with the Information Publication Scheme
- promote awareness and understanding of the FOI Act and its objectives
- investigate complaints about compliance with the Privacy Act
- 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 programme 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 2013–14 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.

**Table 2.1** OAIC Programme 1.1 deliverables

Programme deliverables	Key performance indicators	OAIC's 2013–14 performance	Further information
Privacy and FOI complaint handling services	80% of privacy complaints finalised within 12 months	97.5% of privacy complaints finalised within 12 months	Chapter Seven
	80% of FOI complaints finalised within 12 months	82.3% of FOI complaints finalised within 12 months	Chapter Eight
Privacy compliance activities	Audits/performance assessments finalised within six months	Two audits/performance assessments were finalised within six months	Chapter Seven
FOI merit review services	80% of IC reviews completed within 12 months	71.2% of IC reviews finalised within 12 months	Chapter Eight
Information Publication Scheme agency reviews	No target specified for this indicator	No target specified for this indicator	Chapters Five and Eight
Privacy and FOI enquiries services	No target specified for this indicator	No target specified for this indicator	Chapters Seven and Eight
Advice and assistance on information management practices across the Australian Government	No target specified for this indicator	No target specified for this indicator	Chapter Five
Promotion and educational activities	No target specified for this indicator	No target specified for this indicator	Chapter Four

**Table 2.2** OAIC performance against key performance indicators

Key performance indicator	OAIC's 2013–14 performance	Further information
Australian Government agencies comply with the requirements of the Information Publication Scheme and disclosure logs	The OAIC continued to respond to questions and requests for advice from agencies about their IPS and disclosure log obligations. The OAIC also commenced planning the delivery of the next phase of the IPS compliance review	Chapter Eight
The Principles on open public sector information are promoted and understood across government	The OAIC continued to promote and embed the Principles on open public sector information through submissions, speeches and policy engagement	Chapter Five
OAIC merits review and complaint handling processes meet timeliness and quality benchmarks	See Table 2.1	Chapters Seven and Eight
Information and education products on privacy, FOI and information policy meet stakeholder needs	The OAIC produced a range of information and education products on privacy, FOI and information policy	Chapter Four
The Information Advisory Committee and Privacy Advisory Committee are supported in their role of providing advice to the OAIC	The OAIC hosted one joint Privacy Advisory Committee and Information Advisory Committee meeting	Chapter Four

# Chapter Three

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## Management and accountability

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Overview	20
Corporate governance	20
People management	22
Changes to disability reporting in annual reports	25
Purchasing	25
Consultants	26
ANAO access clauses	26
Exempt contracts	26
Advertising and market research	26
Grant programmes	26
Memorandums of Understanding	26
Ecologically sustainable development and environment performance	27



## 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 subleases 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 Five.

### 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.

During the year the role of chairing the Audit Committee moved from the Assistant Commissioner Corporate Support and Communication to the Assistant Commissioner Dispute Resolution. This move was in anticipation of the requirement of the *Public Governance, Performance and Accountability Rule 2014*, which prohibits the Chief Financial Officer of an agency (a role performed by the Assistant Commissioner Corporate Support and Communication) from membership of an agency's audit committee. The Audit Committee has two independent members from the AHRC and one from the Attorney-General's Department (AGD).

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.

## 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 *Freedom of Information Act 1982* and the *Australian Information Commissioner Act 2010* (the Hawke Review) which was tabled in Parliament on 2 August 2013. The Hawke Review included analysis of the OAIC's structure and processes. Further information about the Hawke Review can be found in Chapter Eight.

## 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 developed a fraud control plan for the period 2014–16 with accompanying control policy and guidelines. The OAIC also revised its policies on breaches of the APS code of conduct and whistleblowing procedures, to provide greater guidance to staff and supervisors in these areas.

The Executive informed staff about the commencement of the *Public Interest Disclosure Act 2013* (PID Act). The PID Act establishes a framework to encourage and facilitate reporting and investigation of wrongdoing by public officials in the Commonwealth public sector, and provides protection for those who report such wrongdoing. Staff were advised that public interest disclosures may be made internally to an Authorised Officer (any of the three Assistant Commissioners) or externally to the Commonwealth Ombudsman.

## Risk

In 2013–14 the OAIC revised its risk register to take account of changes to its risk profile since the last review. An internal audit plan is developed each year based on risks identified in the 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.

The Executive Committee is supported in its management of risks by its internal auditors and the Audit 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 2013–14, the OAIC's people management focus was on responding to staff feedback. In the State of the Service Employee Census in 2012 and 2013, and through its staff consultation forum, OAIC staff told managers that they were unhappy with the OAIC's performance management system and the way under performance and learning and development were managed.

The OAIC was keen to address these issues but mindful of the challenges faced by a small agency with a limited budget.

### Performance management framework

During 2013–14, the OAIC introduced a new performance management framework. The Talking about performance (TAP) framework was the result of cross-agency collaboration. By working with the Australian Public Service Commission (APSC) and the Department of Social Services, the OAIC had access to a performance management framework that was already operating successfully at a large agency. The OAIC was able to tailor this platform to suit its size, business model and the needs of its staff.

The TAP framework comprises a suite of material including overarching guidelines, step-by-step 'how-to' information sheets and a series of templates to ensure consistent reporting at each stage of the performance cycle.

Elements of the framework have been progressively implemented, with opportunities for staff consultation on each element. Staff feedback has been very positive. The framework has been integrated with the OAIC's records management system and its new learning and development plan.

The opportunity to re-use an existing resource from another agency allowed the OAIC to address a pressing need and deliver a comprehensive solution that would have otherwise been beyond the OAIC's means.

### Learning and development

In 2013–14, the OAIC produced a learning and development plan. The plan was designed to be affordable and make use of the skills and knowledge available in-house. The plan was based on the 70:20:10 learning framework advocated by the APSC, and complemented the OAIC's new performance management framework TAP.

Under the learning and development plan, a series of seminars called 'Insights' were offered by video conference once a month, on topics determined by the Leadership Team and presented by in-house experts. Topics covered included administrative law, conducting Information Commissioner reviews, privacy reforms and record keeping.

The six members of the OAIC's Executive each agreed to mentor up to two staff. Staff could self-nominate for the program with the support of their Directors by setting out what they hoped to gain from the program. In its first year of operation 11 staff participated in the program.

The plan also addressed priority learning and development needs during 2013–14. Directors reviewed the learning and development plans contained in performance agreements and identified the highest priority needs across the OAIC. Plain English training was identified as the highest need for 2013–14, and training was offered to all staff.

To monitor the success of the plan, the OAIC introduced a register of all internal and external training opportunities. The register showed that on average OAIC staff spent about two days each in learning activities in the period September 2013 to June 2014. This training was supplemented by other development activities.

### Staff support

Following the Government's Budget announcement to disband the OAIC by 31 December 2014, the OAIC put in place arrangements to support staff through the transition arrangements in preparation for closing the Canberra site. These arrangements included outplacement services for Canberra based staff and sessions on managing change for Sydney staff. All OAIC staff, including those on leave or secondment to other agencies, were provided with regular updates about the change process, and opportunities for questions and feedback were available including through the OAIC's staff consultation forum.

### Staffing profile

The OAIC's average staffing level for 2013–14 was 77.55 staff, with a turnover of approximately 10.3% for ongoing staff. Nine ongoing staff resigned, retired or transferred to other Australian Government agencies. Eight ongoing staff were engaged.



As at 30 June 2014, the OAIC had a total of 81.07 Full-Time Equivalent (FTE) staff, including ongoing and non-ongoing employees. The OAIC's staffing profile as at 30 June 2014 is summarised in Table 3.1. There were no casual staff employed as at 30 June 2014.

As at 30 June 2014, the OAIC had 22 staff located in Canberra and 69 staff located in Sydney. Nineteen ongoing staff had part-time or flexible working arrangements in place.

**Table 3.1** Overview of staffing profile as at 30 June 2014

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	3	3	0	3	0	3
Executive Level 2 (\$111,201–\$126,907)	4	6	8	2	10	0	10
Executive Level 1 (\$95,736–\$102,409)	9	12	14	7	20	1	21
APS 6 (\$75,965–\$83,652)	9	25	28	6	31	3	34
APS 5 (\$68,891–\$72,831)	3	11	11	3	14	0	14
APS 4 (\$61,794–\$65,659)	3	3	5	1	5	1	6
<b>Total</b>	<b>31</b>	<b>60</b>	<b>72</b>	<b>19</b>	<b>83</b>	<b>8</b>	<b>91</b>

## Workplace diversity

The OAIC recognises the importance of reflecting the community it serves through diversity in staffing. Currently 5.5% of staff have a non-English speaking background and 1.1% identify as Indigenous.

The OAIC's Workplace Diversity Committee promoted and supported events including NAIDOC Week, National Close the Gap Day and Harmony Day.

## 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 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.

During the year the OAIC offered flu vaccinations for interested staff, revised its policy on rehabilitation and made standing workstations available in its Sydney and Canberra sites.

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.

## 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](http://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 the National Disability Strategy 2010–20, which sets out a ten year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high level two-yearly report will track progress against each of the six outcome areas of the Strategy and present a picture of how people with disability are faring. The first of these reports will be available in late 2014, and can be found at [www.dss.gov.au](http://www.dss.gov.au).

## Purchasing

The OAIC's purchasing procedures comply with the Commonwealth Procurement Rules issued by the Department of Finance. 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 2013–14, no new consultancy contracts were entered into.

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](http://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 Wallis Consulting Group to undertake the Community Attitudes to Privacy survey which was released in October 2013. The contract with Wallis Consulting Group was entered during 2012–13 and totalled \$77,000. During 2013–14, total payments of \$38,500 were made to Wallis Consulting Group. Further information about the survey is available in Chapter Four.

## Grant programmes

The OAIC does not have a grants programme.

## Memorandums of Understanding

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

## **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.



# Chapter Four

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## Communication and engagement

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Overview	30
2013 Community Attitudes to Privacy survey	31
Privacy law reform	33
Privacy Awareness Week 2014	33
International and regional engagement	34
Media	38
Speeches	38
Publications	38
Website	39
Social media	39
External networks	40
Committees	41



## 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 Australian Government agencies, industry and consumer groups, and the general public.

A key focus this year was an education and awareness campaign about the reforms to the *Privacy Act 1988* (Privacy Act) that commenced on 12 March 2014. The OAIC delivered a comprehensive campaign, regularly communicating the changes to stakeholder groups via the OAIC's website, stakeholder networks, social media, publications and events.

On 9 October 2013, the OAIC released the results of the 2013 Community Attitudes to Privacy survey. The results confirmed that Australians are becoming more concerned about privacy and that they expect that their personal information will be protected.

The OAIC continued to collaborate internationally, hosting international delegations and providing secretariat support to the Asia Pacific Privacy Authorities (APPA) Forum. The OAIC hosted the 40<sup>th</sup> APPA Forum in Sydney on 26–27 November 2013. Privacy authorities from Australia (including state and territory authorities), Hong Kong, Japan, Korea, Macao, Mexico and New Zealand participated in the meeting.

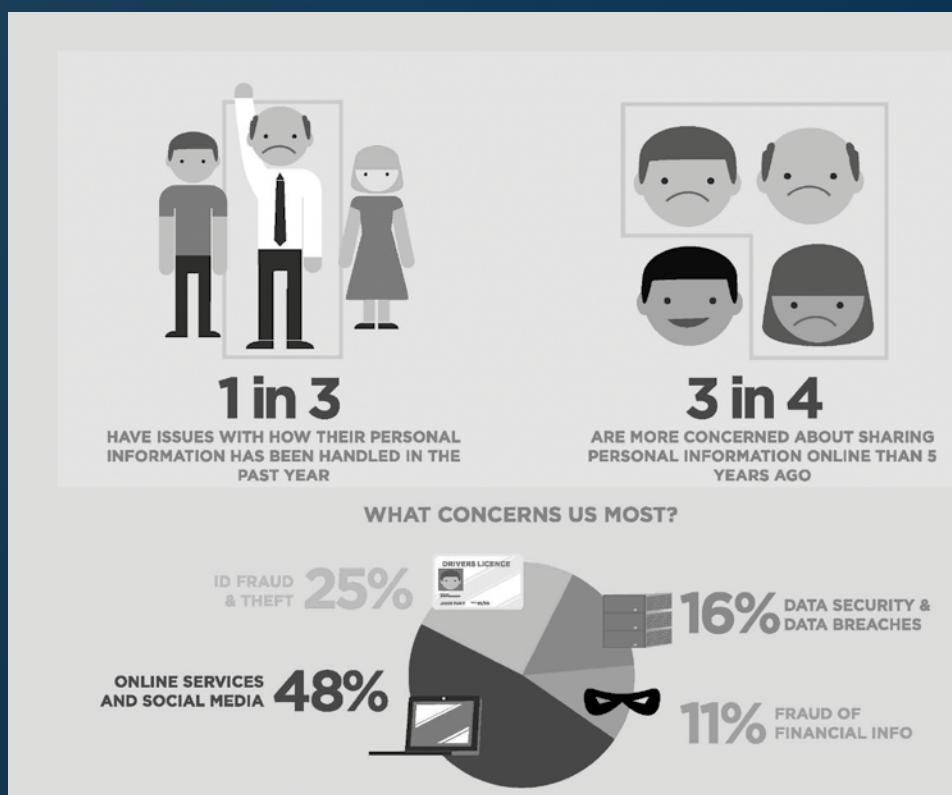
The OAIC featured prominently in media coverage about FOI review decisions, privacy law reform, emerging technologies, data breaches and investigations. The OAIC coordinated a national Privacy Awareness Week campaign, and the Commissioners spoke at a range of forums and conferences.

Throughout the year the OAIC was regularly contacted by organisations and individuals requesting advice, assistance and guidance. There was frequent engagement with stakeholders through our social media platforms and the OAIC's networks for public and private sector information professionals.

## 2013 Community Attitudes to Privacy survey

On 9 October 2013, the OAIC released the results of the 2013 Community Attitudes to Privacy survey. The results showed that Australians are becoming more concerned about their privacy and expect organisations to take effective steps to safeguard their personal information. The survey results also confirmed the growing community concern about privacy risks associated with new technologies and social media.

The survey report and accompanying infographic and video was launched by the Australian Information Commissioner at an event attended by industry and consumer groups. The event included discussion of the results by Timothy Pilgrim, Privacy Commissioner; Professor Barbara McDonald, Australian Law Reform Commission; Gary Blair, Commonwealth Bank of Australia; and Candice Jansz, Youth Advisory Committee member for the Office of the Victorian Privacy Commissioner.



Extract from infographic illustrating key Community Attitudes to Privacy survey results



Key survey results include:

- 48% of Australians believe that online services, including social media, pose the greatest privacy risk
- 63% of Australians have decided not to deal with an organisation because of privacy concerns (an increase from 40% in 2007)
- participants reported that the three most trustworthy industries were health service providers (90%), financial institutions (74%) and Government (69%)
- 96% of participants expect to be informed if their information is lost
- 95% feel that they should be made aware of how their personal information is protected and handled on a day-to-day basis
- 90% of people have concerns about their personal information being sent overseas by businesses
- 82% of participants were aware of federal privacy laws (up from 69% in 2007)
- 33% of Australians have had a problem with the way their personal information was handled in the last 12 months.

The research was sponsored by the Commonwealth Bank of Australia (primary sponsor), Henry Davis York (key sponsor) and McAfee (sponsor). The survey was conducted by Wallis Consulting Group on behalf of the OAIC, and involved 1000 people participating via landline and mobile numbers. The research data was de-identified and made publically available through [data.gov.au](http://data.gov.au).

## Privacy law reform

A significant challenge for the OAIC in 2013–14 was the delivery of an education and awareness campaign about the Privacy Act reforms. Although the OAIC did not receive additional resources for this work, it delivered a comprehensive campaign about the changes for businesses, agencies and the community.

Information about the changes and key guidance documents were included on a dedicated ‘privacy reform’ page on the OAIC website, and were regularly communicated via social media and email alerts to the OAIC’s networks for public and private sector information professionals. The Commissioners spoke about the reforms in media interviews and at a large number of conferences and forums.

The OAIC Privacy Awareness Week 2014 campaign focused on what the reforms meant for the Australian community, and included the release of information about the reforms in plain English and a number of community languages.

The OAIC continues to educate businesses, agencies and the general public about the changes.

## Privacy Awareness Week 2014

Privacy Awareness Week (PAW) is an annual awareness campaign coordinated by members of the APPA Forum to promote privacy rights and responsibilities. This year, PAW was held from 4 to 10 May 2014.

The OAIC’s PAW campaign focused on changes to consumer rights under privacy law reform, as well as the education of organisations about new and existing responsibilities.

The campaign was launched by the Australian Information Commissioner at a business breakfast attended by 200 privacy professionals from the private and public sectors. The event theme ‘Up front and personal’ focused on the need for organisations to be transparent about their privacy practices and to build an organisational culture that respects customer privacy. Attendees heard from guest speakers from Choice, Coles Group and the Commonwealth Bank of Australia. The OAIC launched two new publications — *Guide to developing an APP privacy policy* and a revised *Guide to undertaking privacy impact assessments*.

The OAIC also hosted a sold-out workshop for privacy professionals that focused on best practice complaint handling, and a webinar on credit reporting changes aimed at Consumer Credit Legal Centres and External Dispute Resolution schemes. The Australian Information Commissioner and the Privacy Commissioner also spoke at a variety of public and private sector events during the week.

For individuals, the OAIC produced a range of resources in plain English about the reforms. Publications launched during the campaign included: *What to look for in a privacy policy* (consumer poster), *Credit reporting: know your rights* (a series of fact sheets on credit reporting changes), and *How changes to privacy law affect you* (a plain English fact sheet for consumers that was translated into 11 languages). The OAIC also developed specific content for young people about how to protect privacy when online.

PAW was supported by 210 partners from across the public and private sectors, a 33% increase from last year. Our partners played a critical role in assisting the OAIC to communicate key campaign messages to new audiences and networks. For example, the Privacy Commissioner featured in five short videos produced by Facebook Australia that included hints and tips for protecting personal information. These videos were released on the Facebook Australia page during PAW and reached 700,000 Facebook users and were viewed 3210 times.



Panel discussion at the Privacy Awareness Week launch event.

## International and regional engagement

### International liaison

The OAIC continued its support and work with privacy and freedom of information authorities across the globe. The OAIC regularly responded to requests for advice and other assistance from international colleagues. This included hosting international delegations.

For example, the Australian Information Commissioner and the Freedom of Information Commissioner hosted a visit from a leading member of Ukrainian civil society in June 2014 to discuss the role of the OAIC in promoting freedom of information, accountability and transparency of government.

The Privacy Commissioner hosted a delegation from Mongolia in September 2013 to discuss sustainable governance frameworks that could be implemented in Mongolia. The visit was organised by the Griffith University Institute of Ethics, Governance and Law. The Privacy Commissioner also met with the newly appointed New Zealand Privacy Commissioner in April 2014 to discuss a range of issues of mutual interest, including privacy regulation and administrative matters.

### 8th Annual International Conference of Information Commissioners

The Australian Information Commissioner and the Freedom of Information Commissioner attended the 8<sup>th</sup> International Conference of Information Commissioners, which was held in Berlin in September 2013. Conference participants discussed a range of issues related to transparency and freedom of information, including the role of the media, open data and open government.

The Conference adopted the Berlin Declaration on Strengthening Transparency at the National and International Level, ‘Transparency: The fuel of democracy’. In that Resolution, the International Conference of Information Commissioners:

- advocated the creation of comprehensive and effective legal obligations for access to information upon request
- supported the recognition of an international fundamental right of information, and drew attention to Article 19 of the International Covenant on Civil and Political Rights
- reaffirmed that all eligible states should join and actively support the Open Government Partnership
- noted the Council of Europe Convention on Access to Official Documents (Tromso Convention) and recommended that all states consider ratifying the Convention.

### 35th International Conference of Data Protection and Privacy Commissioners

The 35th International Conference of Data Protection and Privacy Commissioners (ICDPPC) was held in Warsaw, Poland, in September 2013. The theme of the conference was ‘Privacy: A Compass in a Turbulent World’. The Australian Information Commissioner attended the conference and delivered a speech on developing tools for global privacy compliance. The ICDPPC adopted resolutions on a number of matters, including enforcement law coordination, webtracking and digital education and the ‘appification’ of society. The Privacy Commissioner’s role on the ICDPPC Executive Committee expired during the reporting period.

### Association of Information Access Commissioners

During 2013–14, the Association of Information Access Commissioners (AIAC) met twice; in November 2013 (Sydney) and in March 2014 (Melbourne).

The AIAC was established in 2010 by the statutory officers in each Australian jurisdiction responsible for protection of access to information rights. The membership of the AIAC comprises Information Commissioners (Federal, NSW, NT, Queensland and WA),

Ombudsmen (New Zealand, SA and Tasmania) the Federal Freedom of Information Commissioner, Queensland Right to Information Commissioner and Victorian Freedom of Information Commissioner.

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 maintaining the Forum's two websites available at [www.appaforum.org](http://www.appaforum.org) and [www.privacyawarenessweek.org](http://www.privacyawarenessweek.org). In 2013–14, the APPA membership expanded to 17 with one new member authority joining the Forum — the Personal Data Protection Commission, Singapore.

Three APPA Forum meetings took place during the reporting period. In July 2013, members met in Auckland, New Zealand for the 39<sup>th</sup> APPA Forum. At the meeting, members discussed a range of topics including global privacy developments, children's privacy, privacy impact assessments and the interoperability between Europe and APEC's privacy rules. The meeting was hosted by the Office of the Privacy Commissioner, New Zealand.

The OAIC hosted delegates at the 40<sup>th</sup> APPA Forum in Sydney in November 2013. This forum covered topics such as cross-border disclosure of personal information, big data, unmanned aircraft systems, and ethical dilemmas and best practice privacy regulation.

The Personal Information Protection Commission hosted the 41<sup>st</sup> Forum in Seoul, South Korea in June 2014. Topics discussed included international collaboration, recent developments on the 'Right to be Forgotten', and enforcement activities relating to technologies such as cloud computing, social networking, smart phone applications and geo-location technology.

### Privacy Authorities Australia

Privacy Authorities Australia (PAA) is a group of Australian privacy authorities that meets on an ad-hoc basis 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 PAA did not meet during the reporting period.

## OECD Global Privacy Enforcement Network

The Global Privacy Enforcement Network (GPEN) builds on the Organisation for Economic Co-operation and Development (OECD) *Recommendation on Privacy Law Enforcement Cooperation* (2007). 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.

The OAIC continued its involvement in the GPEN during 2013–14. As at 30 June 2014, GPEN had 45 member authorities, including 25 nations, five subnational authorities, and the European Union.

In May 2014, the OAIC joined enforcement authorities from around the globe to participate in the second GPEN Privacy Sweep. The OAIC examined 50 of Australia's most popular apps, including whether the apps had a privacy policy and whether those policies were designed to be viewed on smart phone screens. Results of the sweep will be released in late 2014.

More information about GPEN can be found at [www.privacyenforcement.net](http://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 and as of 30 June 2014, 28 privacy regulatory bodies were signed up to CPEA, representing eight economies. The OAIC resigned as co-administrator of the CPEA in November 2013, but continues to be involved as a CPEA member.

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](http://www.apec.org).

## 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 did not hold any meetings during the reporting period.

## Media

In 2013–14, the OAIC published 15 media releases and responded to 307 media enquiries. Media interest was high in the lead up to the commencement of the privacy law reforms, with the majority of media enquiries concerning the new Australian Privacy Principles (AAPs), enforcement powers and changes to credit reporting. Media interest was also driven by a number of high profile data breaches and the release of own motion investigation reports and FOI review decisions.

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. One highlight was the Privacy Commissioner's participation in the ABC's The Checkout segment 'If I could say one thing', which aired on 19 June 2014.

## Speeches

The Commissioners delivered 75 speeches and presentations on a range of information-related issues — nearly a 25% increase from last year. These speeches were delivered to a wide variety of audiences from the public and private sectors as well as community groups and universities. Speeches covered privacy law reform, open government, FOI reform and cultural change and information law and policy reform.

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

## Publications

A number of new publications were released during 2013–14. A selection of these publications appears below.

### Freedom of Information

- *FOI agency resource 15: Personal and business information — third party review rights*
- Updated FOI Guidelines

### Privacy

- *Australian Privacy Principles guidelines*
- *Australian Privacy Principles quick reference tool*
- *2013 Community Attitudes to Privacy survey research report*
- *Guide to developing an APP privacy policy*
- *Guide to developing an APP privacy policy — summary*
- *Guide to the Privacy (Persons Reported as Missing) Rule 2014*
- *Guide to undertaking privacy impact assessments (revised)*
- *Guide to undertaking privacy impact assessments — summary*

- *Guidelines for developing codes*
- *Guidelines for recognising External Dispute Resolution schemes*
- *Mobile privacy: A better practice guide for mobile app developers*
- *Privacy business resource 4: De-identification of data and information*
- *Privacy (Credit Reporting) Code 2014 (Version 1.2)*
- *Privacy (Credit Related Research) Rule 2014*
- *Privacy fact sheet 24: How changes to privacy law affect you*
- *Privacy fact sheet 25: Credit reporting in Australia — summary*
- *Privacy fact sheets 26 to 40: Credit reporting 'know your rights' series*
- *Privacy fact sheet 41: Commonwealth spent convictions scheme*
- *Privacy (Persons Reported as Missing) Rule 2014*
- *Privacy public interest determination guide*

### Information Policy

- *Information policy agency resource 1: De-identification of data and information*
- *information policy agency resource 2: Open data quick wins — getting the most out of agency publications*

All OAIC publications can be accessed on the OAIC website.

## Website

In 2013–14, the OAIC's website received 1,079,670 unique visitors, 1,510,859 website visits and 4,581,858 viewed web pages.

The OAIC's new website available at [www.oaic.gov.au](http://www.oaic.gov.au) was launched on 5 June 2013. The website was designed to comply with the *Web Content Accessibility Guidelines (WCAG) 2.0*. The OAIC is aiming for the WCAG 2.0 AA standard by December 2014 and has engaged an accessibility expert to audit and report on the OAIC website's level of compliance.

## Social media

The OAIC uses social media, e-newsletters and other web 2.0 platforms to promote and inform stakeholders about the work of the OAIC. In 2013–14, the OAIC increased the use of social media channels (Facebook, Twitter and YouTube) and integrated them into all communications.

### Twitter

The OAIC greatly increased its use of Twitter during 2013–14. The OAIC tweeted 773 times and was re-tweeted 623 times. At 30 June 2014, the OAIC's Twitter account had 2041 followers, a 30% increase from last year.



## YouTube

The OAIC produced three videos in 2013–14 that were hosted on YouTube. The OAIC's YouTube channel received 10,505 views in total during the year, a 68% increase from 2012–13.

## Facebook

The OAIC used Facebook to support a number of education campaigns during the year, particularly during Privacy Awareness Week 2014. In 2013–14, the OAIC's Facebook account had 11,699 individual views and received 279 'likes', bringing the total to 467. This is a 60% increase in page likes, and an 87% increase in views compared to the previous year.

## eNews alerts

The OAIC also communicates with stakeholders through subscription based eNews alerts. In 2013–14, the OAIC's general eNews alerts, OAICnet, had 4929 subscribers, a 22.8% increase compared to last year. Seventeen OAICnet alert were distributed during the reporting period. The OAIC also produces an eNews alert for the Information Contact Officer Network and Privacy Connections (both discussed below). The OAIC's eNews alerts are published on the OAIC website.

# External networks

## 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 2013–14, ICON membership increased from 771 to 852, an increase of 10.5%. The OAIC held four ICON meetings during 2013–14, three in Canberra and one in Sydney. The meetings are an important forum for information contact 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 processing of FOI requests and review applications, updates on Information Commissioner reviews, data breach notification and privacy law reform. Guest speakers at ICON meetings included representatives from the Department of Communications, Department of Finance, Confluence and Open Australia. Twenty three eNews alerts (ICONalerts) were sent out to members.

## Privacy Connections

The Privacy Connections Network is a dedicated network for privacy professionals in the private sector. As at 30 June 2014, the network had 2132 members. Throughout the year, the OAIC communicated with Privacy Connections members about the latest

developments in privacy law reform, including the release of key guidance. Seventeen eNews alerts were sent to members this year.

## Committees

The OAIC administers two statutory committees, the Information Advisory Committee (IAC) and the Privacy Advisory Committee (PAC). The IAC and PAC held a joint meeting in November 2013. The meeting discussed the Hawke Review of the *Freedom of Information Act 1982* and the *Australian Information Commissioner Act 2010*, open government and Australian Government archiving requirements, eHealth, privacy law reform and the release of the OAIC's Community Attitudes to Privacy Survey report.

Given the Australian Government's Budget decision on Tuesday 13 May 2014 to disband the OAIC from 31 December 2014, the OAIC cancelled IAC and PAC meetings that were scheduled to be held in July and November 2014. The OAIC thanks all IAC and PAC members for their support and enthusiasm over the past three years. Both Committees have played a valuable role in shaping the new information regulation agenda that the OAIC was developing. Further information about the committees and their activities during the year is set out below.

### Information Advisory Committee

The IAC, established by the *Australian Information Commissioner Act 2010* (s 27), met once during the reporting period, in November 2013. The IAC is chaired by the Information Commissioner and other members are appointed by the Minister. The IAC's role is to assist and advise the Information Commissioner in the performance of the information commissioner functions.

Ms Elizabeth Kelly, Deputy Secretary, Attorney-General's Department, resigned from the IAC on 3 October 2013. A list of IAC members can be found in Appendix Seven. Minutes of IAC meetings are published on the OAIC website.

### Privacy Advisory Committee

The PAC, established by the *Privacy Act 1988* (s 82), met once during 2013–14, in November 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.

During the reporting period, the terms of Dr Christine O'Keefe, Mr Leon Carter and Associate Professor Moira Paterson expired. Mr Richard Glenn resigned from the PAC on 23 August 2013. A list of PAC members can be found in Appendix Seven. Minutes of PAC meetings are published on the OAIC website.





**Part B**  
Develop and  
implement  
information  
policy



# Chapter Five

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## Develop and implement information policy

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Overview	46
Taking stock: key OAI information policy positions promoted in 2013–14	46
Strengthening ties between information policy, FOI and privacy	50
Information policy activities in 2013–14	51

# 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 in part on effective information management.

In 2013–14, in undertaking its information policy functions, the OAIC continued to engage actively on open government initiatives, both through issuing guidance material for agencies and through collaborating with other agencies and open government advocates. The concept of 'open government' draws together a range of policy areas including those related to open data, accessibility, open licensing, proactive publication, de-identification, information sharing, reusability and big data analytics. During the reporting period, the OAIC also worked to strengthen links between information policy and its other functions — privacy and freedom of information (FOI).

Following the Government announcement in May 2014 that the OAIC will be disbanded from 31 December 2014, the OAIC's privacy and FOI functions will be undertaken by new and existing agencies. While the Government has not indicated an intention to transfer the OAIC's information policy functions to other agencies, the OAIC has been working collaboratively with key stakeholders (including the Department of Communications and the Department of Finance) to hand on information policy resources developed by the OAIC.

### Taking stock: key OAIC information policy positions promoted in 2013–14

The following policy positions are those the OAIC most commonly referred to and promoted in its information policy work in 2013–14. Some of these have been explored in detail in earlier reports and issues papers described below. Together, they form the foundation of the OAIC's vision for government information policy.

These reports and issues papers can be found on the OAIC's website, [www.oaic.gov.au](http://www.oaic.gov.au).

## Government information is a national resource

This principle is enshrined in the objects clause of the FOI Act. Government information has social and economic value and should be recognised as an asset to be used for public purposes. In 2009, the Government 2.0 Taskforce reported on open PSI and the benefits to government flowing from its release. It argued that ‘when information is released it creates new and powerful dynamics which can drive innovative use and reuse, allowing the commercial, research and community sectors to add value to it’ (*Engage: Getting on with Government 2.0*, p 40).

In 2011, the OAIC carried out a detailed study of the value of information held by government in *Issues paper 2: Understanding the value of public sector information*. Since then, the Information Commissioner has continued to promote the importance of harnessing PSI, including by advocating for Australia’s membership to the Open Government Partnership (discussed below).

In April 2014, the OAIC also published a resource for agencies on de-identifying data to encourage greater use and sharing of government information, with appropriate safeguards for privacy — *Information policy agency resource 1: De-identification of data and information*.

## Open access to government information should be the default position

If there is no legal need to protect government-held information (for example, protections in the *Privacy Act 1988*) it should be open to public access.

In May 2011, following a public consultation process, the OAIC released its *Principles on open public sector information* (Open PSI Principles). The Open PSI Principles set out the central values of open PSI: information should be accessible without charge, based on open standards, easily discoverable, understandable, machine-readable and freely reusable and transformable. The Open PSI Principles are intended to help agencies embed strong information management practices into the whole information lifecycle and become confident and proactive publishers of information.

In 2012, the OAIC surveyed agencies to find out how they were progressing with the implementation of the Open PSI Principles. The survey identified areas where agencies were succeeding and other areas where they required assistance. The results of the survey were reported in a summary report — *Open public sector information: Government in transition* — followed by a full report — *Open public sector information: From principles to practice* (Principles to Practice report).

In 2013–14, the OAIC sought to address recommendations made in these reports. A major finding in the Principles to Practice report was that agencies would benefit from greater awareness of existing government policies. These range from aspirational policies promoting more open government and greater community engagement, to technically-oriented policies relating to metadata standards and open data licensing options.



To that end, in 2014 the OAIC engaged with the Department of Communications on its development of an ‘Open data toolkit’ aimed at drawing together in one place the relevant policies and guidelines related to open data. The toolkit is planned for release in the second half of 2014.

### Open government is not just about open access and open data

Open access demonstrates a commitment to open government and, allied to that, to traditions of representative democracy and citizen engagement. Open data gives added life to those traditions in a digital and technologically-enhanced world. Open access and open data are fundamentally important in both a practical and a principled way.

They do not, however, provide a full picture of the actions required to advance open government objectives. National action plans developed under the Open Government Partnership point to other actions that provide complementary outcomes: open archives and better record-keeping, transparent public spending and government accountability, citizen participation in government and navigation of public services, anti-corruption measures, and legislative reform.

### Agencies should embrace proactive release and administrative access

The FOI Act establishes a formal avenue for document release through a written request procedure. This is a necessary legislative right and is appropriate for certain types of document requests, and to resolve disputes about information access.

Changes to the FOI Act in 2010 placed greater emphasis on proactive disclosure, through the Information Publication Scheme, FOI disclosure logs and discretionary release by agencies. Proactive release can be effective in making information publicly accessible through the web to a wider audience. Information released at the right time can facilitate public participation in policy development and implementation at a formative stage.

The OAIC has strongly advocated proactive release through its open government messages, guidance material on web publication and accessibility, seminars that bring government and the community together, and liaison with other government agencies that promote the same philosophy.

Another prominent theme in OAIC work is that agencies should set up administrative access arrangements to supplement and operate alongside the more formal FOI Act request process. In this way a person, after discussion with an agency, may be able to obtain information free of charge, promptly and in a form that is relevant to their requirements.

Administrative access to, and proactive release of, government information provide an effective channel for fast and flexible information release and advance two of the Open PSI Principles: Principle 1 — that open access to information should be the default position; and Principle 2 — that agencies should engage with the community and respond promptly to requests for information.

In 2012, the OAIC published *FOI agency resource 14: Administrative access*, to encourage agencies to take a flexible approach to information release. During 2013–14, the OAIC continued to promote administrative access in Information Commissioner review (IC review) decisions, FOI guidelines, discussions about FOI law reform, and updating *FOI agency resource 14* for publication in July 2014.

OAIC guidance on the new Australian Privacy Principles (APPs) published in 2014 emphasises that administrative access is consistent with an agency’s legal obligation to provide access to personal information upon request under both APP 12 and the FOI Act. Indeed, an administrative access arrangement can assist an agency to respond flexibly and helpfully to a person’s personal information request without the explicit need to guide the requester down an FOI Act path or to rely expressly on APP 12.

### Nothing in the FOI Act restricts release of information

Bringing together both FOI and information policy functions, the OAIC has been able to advocate for a balanced approach to information release which encourages agency engagement with the spirit of the FOI Act, not just compliance with the letter of the law.

Despite the range of exemptions available in the FOI Act, it is not intended to restrict the circumstances in which government information can be released. Section 3A(2) states that it is not the intention of the Parliament in enacting the FOI Act to limit the power of agencies to publish information or give access to documents, or to prevent or discourage agencies from doing so. That means that an agency may disclose a document to which an exemption applies where there are no other restrictions outside the FOI Act on release.

Perhaps more importantly, this option of discretionary release means that an agency is not required to turn its mind to exemption issues upon receiving an access request. Agencies are encouraged to be guided by the public interest in open government and the principle of open access as the default position. It is only at the point of considering a refusal of access that FOI Act exemption issues need to be considered.

There may be occasions when an agency feels comfortable releasing a document to an applicant (despite the existence of an applicable exemption) but decides not to due to the FOI Act obligation to publish the document on the agency FOI disclosure log. To address this situation and encourage greater flexibility in information release, in 2013–14 the Information Commissioner re-issued *Disclosure Log Determination No 2013–1 (Exempt documents)* which allows an agency to choose not to publish a document on its FOI disclosure log in these circumstances, where it would be unreasonable to do so. For more information about the FOI disclosure log determination, see Chapter Eight.

## Strengthening ties between information policy, FOI and privacy

### Information policy and FOI

In practice, the OAIC's FOI policy work has tended to be of a different nature to its information policy work. FOI policy is focused on helping agencies comply with the FOI Act and telling applicants what their rights are (through advices, guidance material and guidelines). Information policy is less driven by legislative compliance and can extend broadly to promoting a public sector culture in which information is valued, properly managed and shared widely.

However, with the OAIC's information policy focus squarely on promoting open government, the conceptual distinction between its FOI and information policy work has been minimal. The FOI Act can be thought of as the legislative anchor of open government in Australia. It offers direction and legislative weight to information policy endeavours centred on advancing open government.

Many of the 2010 reforms to the FOI Act resonate with broader information policy developments. In particular, the FOI Act objects clause (introduced in 2010) states that:

- government information is a national resource and, as such, is to be managed for public purposes (s 3(3))
- functions and powers given by the FOI Act are to be performed in a way that facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4)).

The OAIC's key information policy positions (outlined above) build from and seek to advance these objectives. In 2013–14, the OAIC continued to emphasise the importance of the objects clause in s 3 in both interpreting the FOI Act and as it applies to broader information policy considerations. The OAIC did this in advices to agencies, guidance material (including agency resources on de-identification and open data), IC review decisions and in information policy forums (such as the Big Data Strategy Working Group, discussed below). The OAIC also engaged with key information policy stakeholders, such as the Department of Communications and the Department of Finance (see below).

### Information policy and privacy

As the regulator for both privacy and FOI, the OAIC is uniquely placed to offer advice on privacy in the information policy context. When engaging with stakeholders on open government initiatives the OAIC encourages consideration of privacy issues. For example, in 2013–14 during the development of the *Australian Public Service Big Data Strategy* (Strategy), the OAIC was able to help ensure that 'Protection of privacy' was an explicit element of the Strategy 'vision' and that 'Privacy by design' was one of the six Strategy 'principles'. This was in addition to the OAIC's information policy advice aimed at encouraging alignment of the Strategy with key open government principles, including that government information be treated as a national resource. More information about the Big Data Strategy is below.

The OAIC also helped agencies and organisations navigate the line between open data and privacy protection through its publication in April 2014 of resources on de-identification. More information about the de-identification resources is below.

## **Information policy activities in 2013–14**

### **Big Data Strategy and Working Group**

The OAIC was a member of the Big Data Strategy Working Group, convened by the Australian Government Information Management Office (AGIMO), a part of the Department of Finance. The Big Data Strategy Working Group was tasked with developing the *Australian Public Service Big Data Strategy*, which was finalised and released in August 2013.

The key message of the Strategy is that the Australian Public Service should view data as an asset and exploit it for the benefit of the Australian community, while also ensuring adequate privacy and security safeguards. The emphasis within the Strategy on ‘data as an asset’, privacy and open government is consistent with suggestions made by the OAIC during the development process.

Notably, three of the six ‘Big data principles’ set out in the Strategy were:

- Data is a national asset
- Privacy by design (specifying that privacy be considered throughout the lifecycle of a big data project)
- Enhancing open data (which encouraged agencies to follow the OAIC’s Open PSI Principles).

These principles bring together the central elements of the OAIC’s policy positions on information policy, FOI and privacy. The Strategy can be found at [www.finance.gov.au/big-data](http://www.finance.gov.au/big-data).

During 2013–14, the OAIC also attended meetings of the Whole-of-government Data Analytics Centre of Excellence Leadership Group, established to carry forward the actions proposed in the Strategy and, more generally, to build analytics capability across government and share technical knowledge, skills and tools. The Big Data Strategy Working Group advanced a number of projects including the development of an *Australian Public Service Better Practice Guide for Big Data*. This Guide can be found at [www.finance.gov.au/big-data](http://www.finance.gov.au/big-data).

### **Guidance for agencies and organisations on de-identification**

After a public consultation process, the OAIC published two resources (aimed at business and government respectively) on de-identification in April 2014.

The resources provide general advice about de-identification to assist agencies and organisations in balancing privacy and transparency objectives in information management. They provide guidance on when de-identification may be appropriate, how to choose suitable de-identification techniques and how to assess the risk of re-identification.

For agencies, de-identification may also offer a technique to maximise the utility and value of government information assets while safeguarding privacy and confidentiality. This advances the OAIC's Open PSI Principles and the objectives of the FOI Act, that government information be treated as a national resource and, as such, be managed for public purposes.

The OAIC's de-identification resources are available at [www.oaic.gov.au](http://www.oaic.gov.au).

## Open data quick wins

In May 2014, the OAIC published a new information policy agency resource entitled *Information Policy agency resource 2: Open data quick wins — getting the most out of agency publications*. The main purpose in developing this resource was to encourage agencies to make small but effective changes to their information publication practices to make their data more usable.

Many government reports include agency data about financial, economic, social or regulatory activity or trends, or present data in formats unsuited to reuse (such as publishing tabular data in a PDF file rather than a reusable spread sheet format). Often the underlying raw data could be released alongside the report in a reusable open data format (and, where appropriate, in de-identified form).

The resource is a concise, easy-to-follow checklist encouraging agencies to:

- assess upcoming agency publications, websites, mobile apps and other agency information resources to identify datasets suitable for release in 'open' formats
- ensure the agency has access to the raw data and the right to publish it
- prepare, publish and refine the data.

The resource reflects the OAIC's Open PSI Principles and the findings of the OAIC's Principles to Practice report in 2013. It also draws on existing guidance from other agencies, such as the open data advice in AGIMO's *Web Guide*.

Information Policy agency resource 2 is available at [www.oaic.gov.au](http://www.oaic.gov.au).

## 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 in their jurisdictions.

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 then Attorney-General announced Australia's commitment to join the OGP. In September 2013, the incoming Government put the matter of whether to proceed with Australia's membership of the OGP under consideration.

At the November 2013 joint meeting of the Information Advisory Committee and Privacy Advisory Committee (both chaired by the Information Commissioner) the matter of Australia's membership to the OGP was discussed and culminated in the Information Commissioner writing to the Attorney-General in January 2014 to communicate the Committees' support for Australia's membership.

At 30 June 2014, Australia's membership to the OGP was under consideration by the Australian Government.

### Other engagements with stakeholders on information policy

During 2013–14, OAIC Commissioners and staff participated in a range of groups and forums aimed at progressing various aspects of information policy and management.

In 2014, the Data Sharing Efficiency Working Group held its first meeting. This Working Group was established by the Secretaries Board to enhance the Australian Government's capacity to use and share data. In particular, the Working Group was charged with:

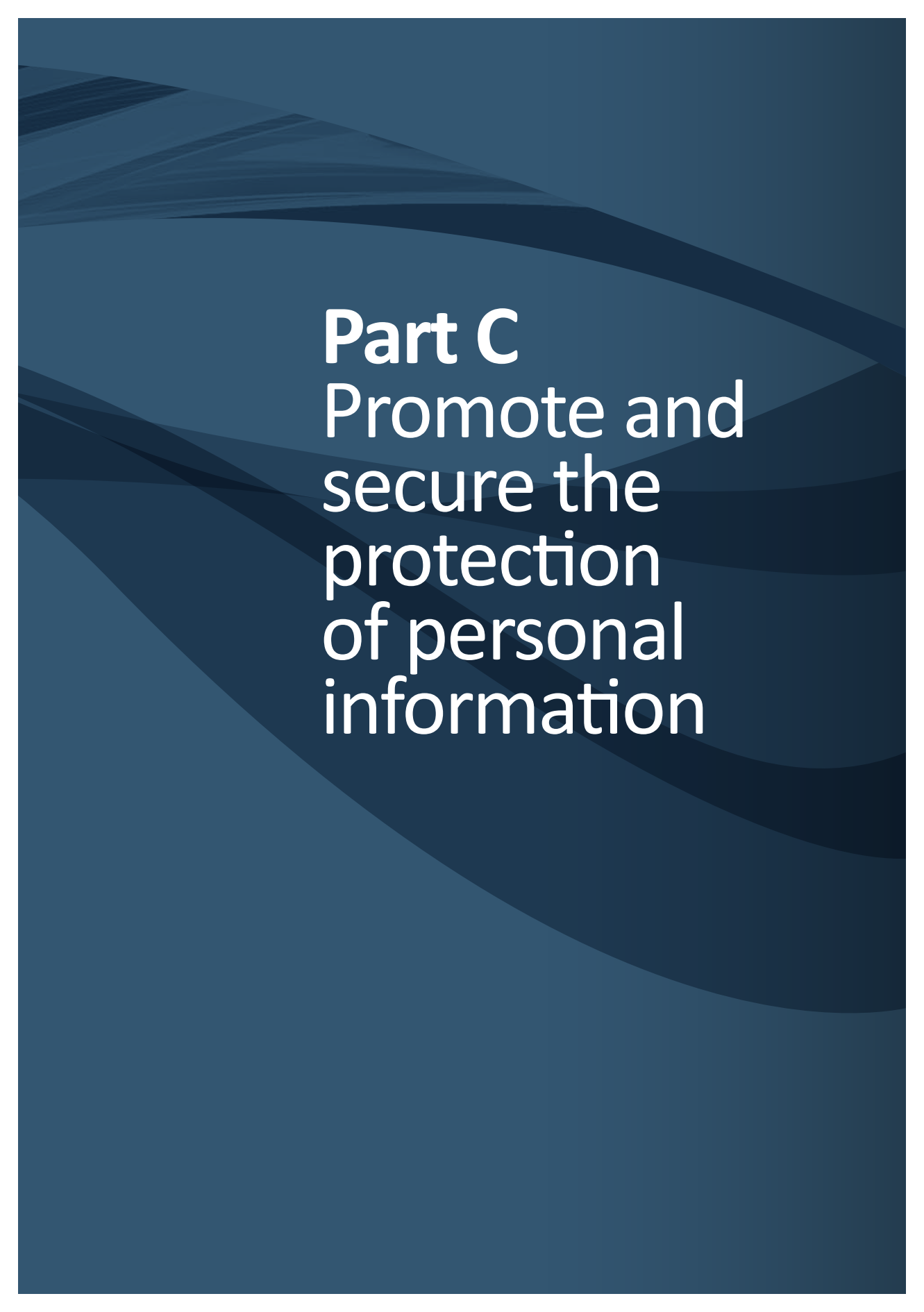
- examining the current legislative, regulatory and ethical environment with a view to enhancing data availability for agencies and increase the ability to further identify opportunities for efficiencies
- raising awareness across agencies about the contribution data analytics can make in the development, monitoring and evaluation of policy and programs, supported by more detailed training and education for agency teams.

The Data Sharing Efficiency Working Group is led by the Department of Communications and participants in the group include senior officials from the Australian Tax Office, the Treasury and the Departments of Finance, Health, Employment, Human Services, Social Services, Agriculture, Immigration and Industry. The Information Commissioner attended meetings of the Data Sharing Efficiency Working Group, providing input and expertise related to the Commissioner's role in advancing Australian Government information policy.

The Information Commissioner was also a member of the Crisp Revisited Reference Group, convened by the Australian Bureau of Statistics. The role of this Group was to provide input to a review of Australia's national statistical system.

During the reporting period, the Freedom of Information Commissioner continued to contribute to the implementation of the Australian Governments Open Access and Licensing (AusGOAL) Framework. AusGOAL is an initiative of the Cross-Jurisdictional Chief Information Officers' Committee (CJCIOC) to encourage greater and consistent use of open licensing by the Commonwealth and state and territory governments. The Commissioner served as the Commonwealth representative on the CJCIOC subcommittee responsible for coordinating implementation of AusGOAL and assisting the Commonwealth Government and state and territory governments to adopt open licensing.

Additionally, OAIC staff attended a range of other open government forums and meetings during 2013–14 aimed at encouraging sharing of information between agencies and enabling staff to keep up to date on open government developments, including the Open Data Government Community Forum and Mobile Community of Practice, organised by the Department of Finance and the AusGOAL Commonwealth Practitioners Group.



**Part C**  
Promote and  
secure the  
protection  
of personal  
information





# Chapter Six

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## Privacy policy and law reform

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Overview	58
Privacy law reform	58
eHealth	63
Advice to Australian Government agencies	64
Advice to Australian Capital Territory agencies	66
Advice to the private sector	66
Involvement in cross-government forums	68
Advice to other jurisdictions	69
New legislative instruments	71
Public interest determinations	72
Submission list	73



## Chapter Six

# Privacy policy and law reform

### Overview

The Office of the Australian Information Commissioner (OAIC) provides strategic policy advice on the application of the *Privacy Act 1988* (Privacy Act) to Australian and ACT Government agencies, the Norfolk Island Administration and private sector organisations.

In 2013–14, a key focus for the OAIC was to provide advice that enabled agencies and organisations to understand their obligations following the commencement of the privacy law reforms made by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Privacy Amendment Act) on 12 March 2014.

The OAIC also continued its work in the eHealth area as the independent regulator of the privacy aspects of the Personally Controlled Electronic Health Records (PCEHR) system and the Health Identifiers (HI) service.

The OAIC provided advice to Commonwealth and state and territory governments, international privacy regulators, privacy advocates, private sector organisations, peak industry bodies, and members of the public. This advice covered a wide range of privacy related matters, and involved responding to specific requests for advice, legislative proposals and reviews, and significant new Government policies and projects.

### Privacy law reform

On 12 March 2014, amendments to the Privacy Act made by the Privacy Amendment Act came into force. These amendments included the replacement of the Information Privacy Principles (IPPs) and the National Privacy Principles (NPPs) with the Australian Privacy Principles (APPs), the amendment of the Part IIIA credit reporting provisions and new regulatory powers for the OAIC.

The OAIC produced an extensive range of guidelines and legislative instruments to assist agencies, organisations and the public to understand their privacy obligations and rights. Additionally, the OAIC responded to specific privacy enquiries from Australian Government agencies, private sector bodies and individuals.

Further information about the privacy law reform changes and materials that the OAIC produced are detailed below.

## Australian Privacy Principles

The APPs are legally binding principles which form the cornerstone of the privacy protection framework in the Privacy Act. The APPs regulate the handling of personal information by both Australian Government agencies and private sector organisations (collectively known as ‘APP entities’).

### *Australian Privacy Principles guidelines*

The OAIC released a final version of its *Australian Privacy Principles guidelines* (APP guidelines) in February 2014. The APP guidelines are an essential and comprehensive reference document to assist agencies, organisations and the public in understanding the APPs.

The APP guidelines outline the mandatory requirements in the APPs and the OAIC’s interpretation of the APPs (including the matters the OAIC may take into account when exercising functions and powers relating to the APPs). Additionally, the APP guidelines include examples that explain how the APPs may apply to particular circumstances to assist compliance with the mandatory requirements as well as good privacy practice suggestions.

The APP guidelines represent the completion of a significant amount of collaborative work both internally and with external stakeholders. The OAIC conducted a period of targeted consultation, before consulting publicly on the guidance. Public consultation took place in three stages over a four month period. In total, the OAIC received 96 submissions to its public consultation from a range of contributors, including from individuals as well as APP entities and peak bodies across different sectors.

### *Guidance about APP privacy policies*

Every entity that is bound by the Privacy Act is required to have a clearly expressed and up-to-date APP privacy policy describing how it manages personal information.

The OAIC produced the *Guide to developing an APP privacy policy* to assist APP entities to comply with APP 1, and to inform individuals about what they should be looking for in a privacy policy. The guide provides some tips, a checklist of important considerations, and a process for developing an APP privacy policy. The OAIC also developed a ‘What to look for in a privacy policy’ poster for individuals.

## Enhanced powers

The privacy reforms gave the Commissioners access to new enforcement powers. The Information and Privacy Commissioners issued a joint regulatory statement in late February 2014 explaining the OAIC’s enforcement approach.

The OAIC also began developing a regulatory action policy that explains the OAIC’s range of powers and its approach to using its privacy regulatory powers.

### *Regulatory action policy*

The OAIC’s *Privacy regulatory action policy* sets out information including:

- the OAIC’s goal of, and guiding principles for, taking privacy regulatory action

- the OAIC’s approach to regulatory action
- how the OAIC decides whether to take regulatory action in a particular situation
- when privacy regulatory actions may be publicly communicated.

The draft policy was released for a public exposure period in March 2014 and the OAIC received comments from various stakeholders including peak industry bodies. The OAIC expects the finalised policy to be published in the second half of 2014.

## Credit reporting laws

The purpose of the consumer credit reporting system is to balance protecting an individual’s personal information with the need for credit providers to have enough information to help them decide whether or not to give credit to an individual.

The new credit reporting provisions in Part IIIA of the Privacy Act govern the use of credit information relating to notifications, data quality, access and correction and complaints. The revised system also covers the 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 were supplemented by an industry developed code of practice, known as the *Privacy (Credit Reporting) Code 294* (CR code), which was registered by the OAIC within the reporting period. The CR code requires all credit reporting bodies to publish statistical and other information about credit reporting activity on their websites by 31 August each year.

### *Credit reporting ‘know your rights’ fact sheet series*

In May 2014, the OAIC released a comprehensive series of 15 fact sheets about credit reporting, called *Credit reporting: Know your rights*. The fact sheets outline what individuals need to know about how their personal information can be handled in the Australian credit reporting system. This is the first comprehensive set of educative resources on credit reporting produced by the OAIC, and is complemented by a list of frequently asked questions.

## External dispute resolution

External dispute resolution (EDR) schemes assist individuals by receiving complaints about the EDR member organisations, and providing independent dispute resolution services to resolve those complaints. The Privacy Act recognises the benefit of individuals bringing their complaints to an EDR scheme that has extensive experience in a particular industry, before it is brought to the OAIC, if necessary.

The Information Commissioner can recognise EDR schemes to handle particular privacy-related complaints under the Privacy Act. In order to be recognised, EDR schemes must demonstrate their accessibility, independence, fairness, accountability, efficiency and effectiveness.

*Guidelines for recognising EDR schemes*

During the reporting period the Commissioner developed *Guidelines for recognising EDR schemes* (EDR Guidelines). These Guidelines outline the matters that the Commissioner must take into account in considering whether to recognise an EDR scheme, the steps an EDR scheme should take to apply for recognition, and the general conditions for ongoing EDR recognition. The Commissioner consulted with EDR schemes in developing the EDR Guidelines.

As at 30 June 2014 the Privacy Commissioner had recognised seven EDR schemes. The EDR Guidelines require recognised EDR schemes to provide information about privacy related complaints to the Commissioner by 31 July each year for inclusion in this annual report, however due to the short time since the privacy reforms commenced the OAIC has waived the requirement for this financial year.

## Codes

*APP codes*

The Privacy Act allows the OAIC to register binding APP codes that are in the public interest. APP codes do not replace the relevant provisions of the Privacy Act, but operate in addition to the requirements of the APPs.

APP codes can be developed by entities on their own initiative, on request from the OAIC, or developed by the OAIC directly. An APP code can provide greater clarity on how the APPs apply in a particular industry, or be used to incorporate higher standards for privacy protection than the Privacy Act requires.

As at 30 June 2014 no APP codes had been registered. However, the OAIC had consulted with the Association of Market and Social Research Organisation (AMSRO) about the development of a new APP code. Further information regarding AMSRO's code can be found under 'Advice to the private sector'.

*Guidelines for developing codes*

In September 2013, the OAIC released the *Guidelines for developing codes — issued under Part IIIB of the Privacy Act 1988* to assist entities to decide whether it is appropriate for them to develop an APP code, and to outline matters that need to be addressed in the development and registration of an APP code.

*CR code*

The Privacy Act also requires the development of a code of practice about credit reporting, called the CR code. The CR code sets out how the Privacy Act's credit reporting provisions are to be applied or complied with by credit reporting bodies (CRBs), credit providers and other entities bound by Part IIIA. Importantly, there must always be a registered CR code.

In December 2012 the Australian Privacy Commissioner requested the Australian Retail Credit Association (ARCA) develop a new credit reporting privacy code. Following extensive consultation with industry representatives, consumer advocates and the OAIC, the *Privacy (Credit Reporting) Code 2014* was registered on the OAIC's Codes Register on 22 January 2014.

## Additional Privacy Law Resources

Following the privacy law reforms, the OAIC updated a number of resources including the *Guide to undertaking privacy impact assessments* and the *Privacy public interest determination guide*.

### *Guide to undertaking privacy impact assessments*

In May 2014, the OAIC released a revised *Guide to undertaking privacy impact assessments* (PIA guide). A privacy impact assessment (PIA) is a way entities can assess a project to understand the impacts that the project might have on the privacy of individuals. Undertaking a PIA assists entities to manage, minimise or eliminate those impacts.

The PIA guide was revised to reflect the introduction of the APPs and the introduction of a new power for the OAIC to direct Australian Government agencies to undertake a PIA. The OAIC also considered research on best practice in undertaking PIAs and incorporated elements from PIA guides from other jurisdictions.

### *Privacy public interest determination guide*

The OAIC has the power to make a determination that an act or practice of an agency or a private sector organisation, which would generally be a breach of an APP or a registered APP code, will instead not be regarded as a breach. This is known as a privacy public interest determination (PID).

In June 2014, the OAIC released an updated *Privacy public interest determination guide* to reflect the new law, including the OAIC's powers in relation to PIDs and the APPs. The guide emphasises the importance of an APP entity consulting with the OAIC before applying for a PID.

### *Privacy (Credit Related Research) Rule 2014*

The Privacy Act allows the Commissioner to make rules which allow credit reporting bodies to use or disclose de-identified information for the purposes of conducting research in relation to credit. In accordance with s 20M(3) of the Privacy Act, the Commissioner developed the *Privacy (Credit Related Research) Rule 2014* to this effect.

Further information regarding the *Privacy (Credit Related Research) Rule 2014* can be found under 'New legislative instruments' below.

### *Privacy (Persons Reported as Missing) Rule 2014*

The reforms to the Privacy Act introduced a range of exceptions to the APPs, known as permitted general situations. One particular permitted general situation allows an APP entity to collect, use or disclose personal information to assist in locating a person who has been reported as missing, provided the entity acts in accordance with rules made under s 16A(2).

The OAIC developed the *Privacy (Persons Reported as Missing) Rule 2014*, which outlines the circumstances in which APP entities are permitted to collect sensitive information and use or disclose personal information to locate a person reported as missing. Further information regarding the *Privacy (Persons Reported as Missing) Rule 2014* can be found under 'New legislative instruments'.

## eHealth

The 2013–14 financial year was the second year of operation of the Personally Controlled Electronic Health Record (PCEHR) system, established under the *Personally Controlled Electronic Health Records Act 2012* (PCEHR Act). This year was also the fourth year of the Healthcare Identifiers (HI) service, an important foundation for the PCEHR system and eHealth generally. The HI service is established under the *Healthcare Identifiers Act 2010* (HI Act).

The handling of individuals' personal information is at the core of both the PCEHR system and the HI service (collectively referred to as eHealth in this report). In recognition of the special sensitivity of health information, both the PCEHR and HI Acts contain provisions protecting and restricting the collection, use and disclosure of personal information. The OAIC administers those provisions as the independent regulator of the privacy aspects of the PCEHR system and HI service.

The OAIC's eHealth activities were carried out under a Memorandum of Understanding (MOU) with the Department of Health (Health). In accordance with the MOU, the OAIC carried out a full program of eHealth related work, including:

- commencement of five audits relating to the PCEHR system and HI service, and completion of three audits/assessments
- establishment of the *Agreement for information sharing and complaint referral relating to the personally controlled electronic (eHealth) record system between the OAIC and the System Operator*, in consultation with Health
- providing input to the independent review of the PCEHR system
- responding to two mandatory data breach notifications from the PCEHR System Operator
- reviewing and developing guidance materials for a range of audiences
- training and developing OAIC staff in the eHealth privacy regulatory framework.

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



## Advice to Australian Government agencies

The OAIC provided policy advice to Australian Government agencies, including advice on the management of personal information through legislation and on specific policy proposals. A selection of the policy advices provided in 2013–14 appears below.

### Serious invasions of privacy in the digital era

The Privacy Commissioner was a member of the Advisory Committee for the Australian Law Reform Commission (ALRC) inquiry into serious invasions of privacy in the digital era.

In addition, the OAIC provided comments to the inquiry in response to the ALRC's issues paper and discussion paper. The OAIC took the view that the most effective way to address serious invasions of privacy (beyond those presently covered by the Privacy Act) would be a complaints model. Under this approach, a person whose privacy has been invaded would initially lodge a complaint with the OAIC rather than starting court proceedings. This approach would be more accessible to individuals and would encourage informal and low-cost resolution of disputes through conciliation. It would also use the OAIC's existing expertise in privacy issues and in conciliating complaints. A court proceeding may be an option at a later stage in resolving a grievance.

### Customer due diligence provisions of the Anti-Money Laundering/Counter-Terrorism Financing Rules

The Australian Transactions Reports and Analysis Centre (AUSTRAC) conducted a consultation on proposed changes to the customer due diligence (CDD) provisions of the *Anti-Money Laundering/Counter-Terrorism Financing Rules 2006* (AML/CTF Rules).

The OAIC reviewed the proposals to allow reporting entities to collect personal information from identified beneficial owners, and to rely on third parties to collect CDD information. The OAIC advised AUSTRAC on its interpretation of the relationship between the APPs and the proposals, which raised privacy issues about the collection and sharing of personal information. The OAIC remained involved in the consultation process, in particular by providing comment on AUSTRAC's response to a PIA on the proposed changes to the CDD provisions, until the new CDD provisions took effect on 1 June 2014.

### Big Data

The OAIC participated in the inter-agency Big Data Strategy Working Group, led by the Australian Government Information Management Office. The Big Data Strategy intends to guide the use of 'Big Data' — high volume data-driven analytical tools — to assist and improve Australian Government agencies' operations. The OAIC participated in the development of the whole-of-government Big Data Strategy to help ensure that it incorporated the obligations of Australian Government agencies under the Privacy Act, and reflected best privacy and information management practice.

## Interaction between the new credit reporting laws and financial hardship laws

The OAIC participated in a multi-agency roundtable on ‘for-profit’ financial difficulty businesses, with a key focus on ‘credit repair’ organisations. Following this roundtable the Australian Securities and Investments Commission (ASIC) sought feedback from the OAIC on a possible definition of ‘credit repair’ services, given the possible overlap with terms defined in the Privacy Act. In response, the OAIC provided advice on the language proposed by ASIC, and also whether the proposed definition would be likely to capture the full range of activities undertaken by ‘credit repair’ organisations.

## Health and medical research guidelines

Under the Privacy Act, the National Health and Medical Research Council (NHMRC) may issue guidelines that relate to the protection of privacy by agencies in the conduct of medical research (s 95), the handling of health information for the purposes of research, the compilation or analysis of statistics, or health service management (s 95A), and the use and disclosure of genetic information by health practitioners (s 95AA).

The Privacy Act reforms that commenced on 12 March 2014 meant that updates to these guidelines were required to ensure that they reflected the amended Privacy Act and would be current and operational. The OAIC worked with the NHMRC to identify the updates required to the three guidelines prior to the commencement of the reforms. The guidelines were registered on the Federal Register of Legislative Instruments on 11 March 2014.

## Membership of EDR schemes

As a result of amendments to the Privacy Act, certain organisations known as credit providers are now required to become a member of an EDR scheme that has been recognised by the OAIC. Membership to an EDR scheme will allow a credit provider to engage with the credit reporting system. This requirement became problematic for certain energy and water service providers whose current EDR schemes are unable to seek recognition as a result of statutory restrictions.

Following the OAIC’s release of guidelines relating to the recognition of EDR schemes, the OAIC liaised with EDR schemes that were unable to seek recognition under the Privacy Act. The OAIC then provided advice to the Attorney-General’s Department about the barriers preventing EDR schemes from seeking recognition, and the implications these barriers would have on individuals, energy and water providers, and the credit reporting system generally. The OAIC also provided advice on possible resolutions and transitional arrangements to allow these credit providers to continue accessing the credit reporting system.

## Part 13 of the Telecommunications Act

The OAIC provided advice to the Department of Communications on proposed reforms to Part 13 of the *Telecommunications Act 1997*, as part of the Australian Government’s deregulation agenda. The OAIC also participated in stakeholder forums run by the Department of Communications. This work will continue in 2014–15.

## Department of Human Services MOU

The OAIC and the Department of Human Services (DHS) entered into an MOU to cover the 2013–14 financial year. Under the MOU, the OAIC provided dedicated policy advice and assistance to DHS in relation to the interpretation and management of personal information privacy obligations by DHS in connection with the administration and delivery of its payments and services. This included providing advice on DHS's myGov client access portal.

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

## Advice to Australian Capital Territory agencies

The OAIC provides advice to Australian Capital Territory (ACT) Government agencies on privacy issues under an MOU. More information about the MOU can be found at Appendix Five.

## Territory Privacy Principles

The OAIC undertook to compare the Territory Privacy Principles (TPPs) contained in schedule 1 to the Information Privacy Bill 2014 (ACT) with the APPs contained in schedule 1 of the Privacy Act, following a meeting with the ACT Government's Justice and Community Safety Directorate (JACS).

The OAIC conducted the analysis comparing the TPPs with the APPs for any material difference. The OAIC found some differences between the TPPs and APPs. The OAIC advised JACS of these differences.

The *Information Privacy Act 2014* (ACT), including the Territory Privacy Principles, will commence on 1 September 2014.

## Advice to the private sector

The OAIC worked collaboratively with business and not-for-profits to promote an understanding and acceptance of the new privacy laws and APPs. During 2013–14, the OAIC provided advice to private sector entities on a variety of matters.

### APP 7 and communications between general practitioners and patients

APP 7 introduced new obligations for organisations, including healthcare providers, around direct marketing. Advice from the OAIC was sought on the application of APP 7 to communications between health practitioners and their patients.

The OAIC advised that some health practitioner communication activities may meet the definition of direct marketing (the use and/or disclosure of personal information to communicate directly with an individual to promote goods and services).

## Public reporting of payments to healthcare providers

Medicines Australia sought advice from the OAIC about the privacy implications of a proposed transparency measure that would involve public reporting about pharmaceutical companies' payments and other transfers of value to individual healthcare professionals. The OAIC advised on a number of aspects of the proposal, including the distinction between primary and secondary purposes of collection, exceptions permitting the use and disclosure of personal information for a secondary purpose, consent issues, and adoption, use and disclosure of government related identifiers. The OAIC also provided advice to the Australian Medical Association about the proposal.

## Google

During the course of 2013–14, the OAIC continued its engagement with Google on the development of the Google Glass wearable computing device. Previously the OAIC, in conjunction with other national privacy regulators, wrote to Google to raise privacy issues about the development of Google Glass. Specifically, the signatories 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.

In 2013–14, the OAIC's interaction with Google included an opportunity for the Privacy Commissioner to participate in a demonstration of Google Glass. The OAIC also received briefings from Google regarding products in development and new products during the course of 2013–14. In the course of these briefings, the OAIC provided verbal comments to help Google achieve better privacy practice.

## Facebook

The OAIC received regular briefings from Facebook in 2013–14 regarding new products and products in development. In the course of these briefings, the OAIC provided verbal comments to help Facebook achieve better privacy practice.

## Advice to small business on credit reporting laws

Following recent changes to Australia's credit reporting laws, the OAIC received a number of enquiries about the definition and obligations of a 'credit provider' in the Privacy Act.

In response, the OAIC provided advice that a small business (or small business operator) that falls within the definition of a credit provider must have a credit reporting policy outlining how it manages credit information. However, small businesses that are credit providers and do not engage with the credit reporting system may be able to comply with these obligations by publishing a short statement that states the business handles credit information in certain circumstances, but does not disclose this information to credit reporting bodies. The OAIC further advised that a credit provider that wishes to engage in the credit reporting system must be a member of a recognised EDR scheme, unless an exemption to that obligation exists in the privacy regulations.

## Market and Social Research Privacy Code

The Market and Social Research Privacy Code, previously registered under Part IIIAA of the Privacy Act, was no longer a registered code under the Privacy Act after 12 March 2014.

The Association of Market and Social Research Organisations (AMSRO) advised the OAIC that they intended to register a new APP code in accordance with the Privacy Amendment Act. The OAIC advised AMSRO on the process for developing and registering a code under the revised Privacy Act. At the end of the reporting period, AMSRO had publicly consulted on the proposed APP code.

## Involvement in cross-government forums

The OAIC is a member of several cross-government committees and forums. The OAIC engages with other members and state and territory government agencies to provide advice on the privacy obligations relevant to that committee or forum.

### The National Identity Security Coordination Group

The OAIC is a member of the National Identity Security Coordination Group (NISCG), coordinated by the Attorney-General's Department (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

The OAIC continued to participate in the National Biometrics Interoperability Framework Steering Committee. The purpose of the Committee is to guide the biometric centres of expertise managing and overseeing the National Biometric Interoperability Framework (NBIF), and to promote biometric interoperability across the Australia Government. The OAIC provides policy advice on the privacy considerations to be taken into account in the development of the NBIF, and other biometrics projects.

### AUSTRAC Privacy Consultative Committee

The OAIC is a member of the 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 OAIC in performing functions under the AML/CTF Act. The Privacy Consultative Committee is one of the means by which the AUSTRAC CEO fulfils these obligations.

## Arrangement with state and territory health and privacy regulators

In 2012–13, the OAIC developed an information sharing and complaints referral arrangement between the OAIC and state and territory health and privacy regulators (the Arrangement), following extensive consultation with other 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.

In April 2014, the Information and Privacy Commissioner New South Wales agreed to become a party to the Arrangement, joining the other parties:

- OAIC
- Office of the Information Commissioner, Queensland
- Health Services Commissioner, ACT Human Rights Commission
- Office of the Health Services Commissioner, Victoria
- South Australian Health and Community Services Complaints Commissioner.

In May 2014, the OAIC wrote to all parties to the Arrangement seeking comment on the Arrangement. The terms of the Arrangement include a review of the Arrangement by 30 June 2014 (and every two years subsequently). None of the parties indicated that any changes were required, and the OAIC wrote to all parties in June 2014 confirming that the Arrangement would continue in its current form.

## Advice to other jurisdictions

The OAIC provides advice to other jurisdictions as part of its activities, both internationally and domestically.

During 2013–14, the OAIC continued to participate actively in a number of international privacy and data protection forums. Participation in these forums enables the OAIC to build collaborative relationships and remain aware of emerging international privacy protection issues. Below are some of the specific interactions the OAIC had with these forums during 2013–14.

During 2013–14, under the Asia-Pacific Economic Cooperation (APEC) Cross-border Privacy Enforcement Arrangement the OAIC worked with regulators including the Data Protection Commissioner of Ireland and the Office of the Privacy Commissioner of Canada on data breach matters that had international ramifications.

The OAIC actively participated in discussions with the Asia Pacific Privacy Authorities (APPA) Forum on emerging privacy technology, including through APPA's Technology Working Group. The OAIC also participated in regular meetings of the Organisation for Economic Cooperation and Development's Global Privacy Enforcement Network Asia-Pacific subgroup, in which privacy regulators discuss their experiences and emerging trends, and share expertise.

Domestically, the OAIC provided policy advice to state and territory governments in relation to the sharing and handling of personal information.

More detailed information about these forums can be found in Chapter 4.

### **Advice to the Ombudsman South Australia on Information Sharing Guidelines**

The OAIC provided advice to the Ombudsman SA on the compatibility of the *Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children, Young People and their Families* and the APPs. The OAIC advised the Ombudsman SA on its interpretation of when a disclosure of an individual's personal information can occur without the consent of that individual, and the consistency of the interpretation contained within the Information Sharing Guidelines against the APP 6 guideline developed by the OAIC.

### **Advice to Queensland Government privacy review**

The OAIC provided a submission to the Queensland Government's review of the *Information Privacy Act 2009* (Qld) and the *Right to Information Act 2009* (Qld). The OAIC's submission emphasised the value of national consistency in privacy regulation across Australian jurisdictions, and outlined the upcoming reforms to the Privacy Act. It also provided information on the recent review of the Commonwealth freedom of information regime (the Hawke review), and noted key elements of the OAIC's submission to that review.

### **Advice to Northern Territory Department of Health My eHealth Record database**

The Northern Territory Department of Health (NT Health) requested advice from the OAIC about private healthcare providers' obligations under APP 9 when collecting, using and disclosing Medicare numbers through the NT *My eHealth* Record database. This was intended to assist in identifying duplicate records and enable searches for Individual Healthcare Identifiers.

### **Trans-Pacific Partnership Free Trade Agreement**

The Trans-Pacific Partnership, also known as the Trans-Pacific Strategic Economic Partnership Agreement, is a multilateral free trade agreement that aims to integrate the economies of the Asia Pacific region. Membership 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 Trans-Pacific Partnership. Most recently, the OAIC provided advice on the Trans-Pacific Partnership's interaction with APP 8 — Cross-border disclosure of information.

## New legislative instruments

Under the Privacy Act, the Information Commissioner has power to make certain legislative instruments. When making those legislative instruments, the Commissioner is required to comply with the requirements of the *Legislative Instruments Act 2003*. All legislative instruments finalised during 2013–14 were registered on the Federal Register of Legislative Instruments (FRLI).

### Privacy (Credit Reporting) Code 2014

The *Privacy (Credit Reporting) Code 2014* (CR code) was registered on OAIC's Codes Register on 22 January 2014. The CR code is a written code of practice about credit reporting that supplements the credit reporting provisions in the Privacy Act. As part of the reforms to the Privacy Act, the OAIC is required to ensure that there is a registered CR code at all times after 12 March 2014.

On 3 April and 24 April 2014, the OAIC registered variations of the CR code on the OAIC's Codes Register. The first variation was requested by the code developer, ARCA, and extended the period of time before an overdue payment can be listed as repayment history information on an individual's credit report. The second variation was made on the OAIC's own initiative and made some minor technical variations, including the insertion of a repeal provision. The CR code and its variations have also been registered on FRLI.

### Privacy (Persons Reported as Missing) Rule 2014

The OAIC registered the *Privacy (Persons Reported as Missing) Rule 2014* (the Rule) on FRLI on 3 March 2014. The Rule sets out when, under permitted circumstances, an APP entity may collect sensitive information about a person reported as missing and an APP entity may use or disclose personal information about a person reported as missing.

The OAIC published a *Guide to the Privacy (Persons reported as Missing) Rule 2014* (the Guide), to assist APP entities and others to understand and use the Rule. The Guide outlines the mandatory requirements of the Privacy Act and the Rule, examples that explain how these may apply, as well as good privacy practice.

### Privacy (Credit Related Research) Rule 2014

The *Privacy (Credit Related Research) Rule 2014* (the Rule) was registered on FRLI on 7 May 2014. The purpose of the Rule is to permit the use or disclosure of de-identified information in credit related research, where it is in the public interest. The use or disclosure of de-identified information by credit reporting bodies, when conducting credit related research, is permitted when that research complies with the Rule and s 20M of the Privacy Act.

The OAIC consulted with industry and other government agencies to develop the Rule. The Rule sets out the permitted purposes for conducting credit related research, reasonable steps to take to de-identify credit reporting information and the restrictions on disclosing de-identified credit reporting information. Most importantly,



the re-identification of de-identified credit reporting information is prohibited. A credit reporting body must also include a statement in its privacy policy on the management of de-identified information.

## 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 APP or an approved APP 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).

### Review of existing PIDs for privacy reforms

Before the commencement of the Privacy Act reforms, the OAIC made the *Privacy Public Interest (Enhancing Privacy Protection) Amendment and Repeal Determination 2014*. This determination amended and repealed 11 PIDs that were in force immediately prior to commencement of the Privacy Amendment Act. In particular, the determination:

- made minor amendments to PIDs 3A, 5, 12 and 12A to ensure that, on commencement of the Privacy Amendment Act, each determination would operate in an identical fashion to the way it operated immediately before commencement
- repealed PIDs 4, 7, 11, 11A, 13 and 13A as the acts and practices covered by these determinations would not breach the Australian Privacy Principles in the amended Privacy Act
- repealed PID 8 as the act or practice covered by the determination was complete and the determination was no longer required.

Before making these determinations, the OAIC gave notice to each original applicant of the proposed amendment or repeal of their PID. As the effects of the determination were of a minor nature and did not substantially alter existing arrangements, the OAIC was satisfied that further consultation was unnecessary.

### International Money Transfers

On 12 March and 16 May 2014, the OAIC made three temporary PIDs in response to applications by the Australia and New Zealand Banking Group Limited and the Reserve Bank of Australia. The PIDs allow the current well-established international money transfer (IMT) process to continue by permitting the disclosure of the personal information of a beneficiary of an IMT to an overseas financial institution when processing an IMT, without breaching the APPs. The temporary PIDs will apply for a period of up to 12 months, while the OAIC considers whether longer-term PIDs should be made.

## Submission list

In 2013–14, the OAIC made several privacy submissions to inquiries being undertaken by parliamentary committees and government agencies. The published submissions made by the OAIC during 2013–14 are listed below.

### Privacy law reform

- *Discussion Paper 80: Serious invasions of privacy in the digital era* — submission to the Australian Law Reform Commission (from May 2014)
- *Issues Paper 43: Serious invasions of privacy in the digital era* — submission to the Australian Law Reform Commission (December 2013)
- *Review of the Information Privacy Act 2009 (Qld) and Right to Information Act 2009 (Qld)* — submission to Queensland Department of Justice and Attorney-General.

### Employment

- *Review of Subdivision A of Division 6 of Part VIIC of the Crimes Act 1914 — the working with children exclusion* — submission to the Attorney-General's Department
- *Notification of employment decisions in the Gazette — a discussion paper* — submission to the Australian Public Service Commission.

### Finance

- Statutory review of the *Personal Property Securities Act 2009* — submission to Ashurst.

### Health

- *Revision of Chapter 2.3 of National Statement on Ethical Conduct in Human Research* — submission to the National Health and Medical Research Council.

### National security

- Proposed amendment to the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No 1)*: Customer Due Diligence provisions — submission to AUSTRAC
- Review of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* — submission to AUSTRAC.

### Transport

- *Proposed Compliance Framework for Heavy Vehicle Telematics* — submission to the National Transport Commission.

## Telecommunications

- Inquiry into comprehensive revision of the *Telecommunications (Interception and Access) Act 1979* — submission to the Senate Legal and Constitutional Affairs Committee.

## Online Services

- Review of Whois policy for .au domain names – submission to .au Domain Administration Ltd
- Study of Whois Privacy and Proxy Service Abuse – submission to the Internet Corporation for Assigned Names and Numbers.

# Chapter Seven

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## Privacy compliance

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Overview	76
Responding to privacy enquiries	76
Complaints	81
Determinations	90
Commissioner initiated investigations	91
Data breach notifications	93
Data-matching	94
Assessments	97
Personal Information Digest and APP 1	103

# Chapter Seven

## Privacy compliance

### Overview

The Office of the Australian Information Commissioner (OAIC) undertakes a wide range of activities to ensure that privacy is valued and respected in Australia. These include running a telephone and written enquiry service, investigating and resolving individual complaints, conducting assessments, data-matching inspections, Commissioner initiated investigations (CIIs) and receiving and reviewing data breach notifications (DBNs). The OAIC also works with agencies and organisations to provide strategic policy advice (see Chapter Six).

In 2013–14, the OAIC received 4239 privacy complaints, an increase of 183.3% over the 1496 received in 2012–13. This is a significant increase over previous years and appears to arise from changes in the credit related provisions of the Privacy Act and complaints from people affected by several well publicised data breaches in both the public and private sectors. Additionally, the OAIC received 71 voluntary DBNs, a 16.4% increase on the number of DBNs received in 2012–13.

Six CIIs (previously named own motion investigations) were commenced and work was undertaken on 13 assessments (previously known as audits).

Table 7.1 shows the total number of privacy complaints received and finalised by the OAIC since the commencement of operations on 1 November 2010.

**Table 7.1** OAIC privacy complaints received and closed since 2010

	2010–11 (From 1 November)	2011–12	2012–13	2013–14	Total number of privacy complaints
Received	780	1357	1496	4239	7872
Closed	775	1383	1504	2617	6279

### 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 2013–14, the enquiries line answered 16,491 telephone calls, 9998 of which related to privacy matters that were within the OAIC’s jurisdiction. A further 1739 enquiries were received about privacy matters that were out of jurisdiction.

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

Table 7.2 sets out the top 10 types of callers who telephoned the enquiries line in 2013–14.

**Table 7.2** Top 10 privacy caller types

Top 10 privacy caller types	Number of calls
Individuals	7230
Business and professional associations	877
Health service providers	298
Real estate agents	241
Legal, accounting and management services	206
Australian Government	171
Finance (including superannuation)	112
Charities	111
Personal services (including employment, child care, vets)	106
Education	70

Tables 7.3.1–7.3.4 provide a breakdown of issues discussed in the calls received during 2013–14. More than half (52%) of the privacy-related calls were about the National Privacy Principles (NPPs), and a further 43% were about the Australian Privacy Principles (APPs) which came into force in March 2014. Calls about the Information Privacy Principles (IPPs) made up a small proportion of the calls.

The most frequently discussed issue in 2013–14 was credit reporting including the handling of credit worthiness information (primarily due to the commencement of new rules relating to credit worthiness as part of the privacy reforms that commenced in March 2014), followed by use and disclosure of personal information, and NPP exemptions.

**Table 7.3.1** Breakdown of issues discussed: APPs

Issues	Number of calls
APP 1 — Open and transparent management	167
APP 2 — Anonymity and pseudonymity	11
APP 3 — Collection	409
APP 4 — Collection of unsolicited personal information	22
APP 5 — Notification of collection	242
APP 6 — Use or disclosure	743
APP 7 — Direct marketing	121
APP 8 — Cross-border disclosure	52
APP 9 — Government identifiers	7
APP 10 — Quality of personal information	53
APP 11 — Security of personal information	403
APP 12 — Access to personal information	449
APP 13 — Correction	32
APPs — Exemptions	647
APPs generally	920

**Table 7.3.2** Breakdown of issues discussed: IPPs

Issues	Number of calls
IPPs 1, 2, and 3 — Collection	68
IPP 4 — Data security	45
IPP 5 — Privacy statement	19
IPPs 6 and 7 — Access and correction	18
IPPs 8 and 9 — Accuracy and relevance	23
IPPs 10 and 11 — Use and disclosure	158
IPPs generally	31

**Table 7.3.3** Breakdown of issues discussed: NPPs

Issues	Number of calls
NPP 1 — Collection	899
NPP 2 — Use and disclosure	1324
NPP 3 — Data quality	115
NPP 4 — Data security	691
NPP 5 — Openness (privacy statement)	45
NPP 6 — Access and correction	807
NPP 7 — Identifiers	3
NPP 8 — Anonymity	9
NPP 9 — Transborder data flows	31
NPP 10 — Sensitive information collection	32
NPPs — Exemptions	1012
NPPs generally	214

**Table 7.3.4** Breakdown of issues discussed: Other

Issues	Number of calls
Credit reporting	1438
Data breach notification	43
Data-matching	4
Healthcare identifiers	1
Personally controlled electronic health records	6
Privacy codes	2
Privacy law reforms	789
Spent convictions	99
Tax file numbers	53

Table 7.4 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 with business and professional associations being the industry group most enquired about.



**Table 7.4** Top 10 privacy sector industry

Private sector industry group	Number of telephone enquiries
Business and professional associations	1324
Health service providers	710
Real estate agents	457
Finance (including superannuation)	301
Telecommunications	244
Retail	203
Insurance	167
Personal services (including employment, child care, vets)	135
Online services	117
Debt Collectors	103

Following are some examples of calls received during 2013–14.

- A caller asked about the definition of ‘use’ versus ‘disclosure’. The enquirer was provided with information on NPP 2 (use and disclosure) and NPP 9 (transborder data flows), as the caller’s organisation offers a cloud computing service and has locations overseas. The caller also enquired about the differences between the NPPs and the APPs. The enquirer was referred to the OAIC publication that compares the APPs to the NPPs and other law reform publications. It was also suggested that the caller subscribe to the OAIC’s Privacy Connections newsletter to receive notification of further guidance on the reforms.
- A caller stated that when they applied to a credit provider for a car loan the provider had advised that credit checks would not be performed as part of the process. However, the individual then received an alert from a credit reporting body stating that their credit file had been accessed. When the caller contacted the credit provider, it admitted that ‘due to human error’ it failed to have the individual sign its disclosure notice.

The caller was advised by the OAIC that a credit provider is not required to obtain an individual’s consent to access their credit file. However, a credit provider is required to advise the individual that it may provide their personal information to a credit reporting body in order to access the credit file. The caller was also advised on the OAIC’s privacy complaints process.

- A caller advised that they were in the process of starting up a small photography business that will photograph local sporting events, publish those images online and provide individuals with the option to purchase those photographs. The enquirer asked about their privacy obligations.

The caller was provided with information about the small business operator exemption, noting that if the organisation is considered to be trading in personal information without consent, then it will not be able to claim this exemption, irrespective of the annual turnover.

The caller was also provided with advice on the NPPs generally, with specific reference to collection notification, use and disclosure, and access requirements. It was suggested that the enquirer consider whether it is practicable for the organisation to seek consent, as well as what steps the organisation will take if an individual does not consent, withdraws their consent or raises privacy concerns. The caller was advised that best practice would be to have a process in place to deal with such matters.

### Written enquiries

In 2013–14, the OAIC received 3789 written enquiries; 2141 related to privacy matters that were within the OAIC’s jurisdiction and a further 314 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 not met in 2013–14, with 71% of privacy related written enquiries responded to within 10 working days. This result was due to a significant increase in written enquiries received, within a short timeframe, about the privacy reforms. Enquirers were notified of any delay at the time.

In 2013–14, 36% of privacy related written enquiries were about the APPs and a further 29% related to the NPPs. This combined total of 65% is consistent with the 2012–13 figure for enquiries about the NPPs which was 64%.

## 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 APPs (previously the NPPs)
- personal information has been handled by an Australian Government agency in a manner that does not comply with the APPs (previously 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 2013–14

In 2013–14, the OAIC received a total of 4239 complaints relating to privacy, on a wide variety of issues. As stated above, this is a significant increase over previous years and appears to arise from changes in the credit related provisions of the *Privacy Act 1988* (Privacy Act) and complaints from people affected by two particular data breaches in the public and private sector.

In 2013–14, 1813 of the total number of complaints received (or 42.7%) were about credit related issues. About 25% of complaints were about the NPPs and another 25% about the IPPs. Given the commencement of the new privacy laws on 12 March 2014, only a small number of complaints (163) had been received by 30 June 2014 that raised issues under the APPs.

Table 7.5 outlines the relevant parts of the Privacy Act that were the subject of complaints. The number of complaints that related to parts of the Privacy Act exceeds the total number of complaints and the percentages exceed 100% because a complaint can relate to more than one part of the Privacy Act.

**Table 7.5** Part of the Privacy Act subject of complaints

Key issue	Number of complaints that include key issue	%
Credit reporting	1813	42.7
NPPs	1064	25.1
IPPs	1035	24.4
APPs	163	3.8
Not in jurisdiction	157	3.7

Table 7.6.1 sets out the issues complained about under the NPPs, IPPs and APPs and Table 7.6.2 sets out other issues in complaints. Both tables display each issue as a percentage of total complaints received in 2013–14. The percentage of complaints column exceeds 100% because a complaint can raise more than one issue. The most commonly complained about issues in 2013–14 were use and disclosure, access to personal information and security of personal information.

**Table 7.6.1** Issues in complaints: NPPs, IPPs and APPs

Issue	NPPs Number of complaints	NPPs % of complaints	IPPs Number of complaints	IPPS % of complaints	APPs Number of complaints	APPS % of complaints
Openness and transparency	3	0.1	n/a	n/a	3	0.1
Anonymity and pseudonymity	1	0.02	n/a	n/a	2	0.05
Collection	171	4.0	32	0.8	42	1.0
Unsolicited personal information	n/a	n/a	n/a	n/a	1	0.02
Notification of collection	0	0	6	0.1	7	0.2
Use or disclosure	704	16.6	1020	24	100	2.4
Direct marketing	n/a	n/a	n/a	n/a	10	0.2
Cross-border disclosure	4	0.1	n/a	n/a	0	0
Government identifiers	0	0	n/a	n/a	1	0.02
Quality of personal information	168	4	7	0.1	7	0.2
Security of personal information	162	3.8	920	21.7	39	0.9
Access to personal information	191	4.5	2	0.05	66	1.6
Correction	0	0	8	0.2	1	0.02
Information kept by record keeper	n/a	n/a	1	0.02	n/a	n/a

**Table 7.6.2** Issues in complaints: Other

Issue	Number of Complaints	%
Credit reporting	2028	47.8
Data matching	2	0.05
Healthcare identifiers	4	0.1
Not in jurisdiction	172	4.1
Spent convictions	1	0.02
TFN	9	0.2

## Most complained about sectors

Table 7.7 shows the number of complaints made about each of the 10 most commonly complained about industry sectors. As in 2012–13, the finance sector continues to be the most frequently complained about industry. Complaints against Government were high but reflect a large number of individual complaints received about a single issue related to one government agency. For example in 2013–14, the OAIC received a large number of complaints against the Department of Immigration and Border Protection from people affected by a data breach that occurred in February 2014. The large number of complaints regarding credit reporting bodies is related to the introduction of changed credit provisions in the reforms to the Privacy Act introduced in March 2014.

**Table 7.7** Ten most commonly complained about sectors

Sector	Number of complaints
Finance (including superannuation)	1532
Australian Government	1049
Credit reporting bodies	507
Telecommunications	192
Health service providers	110
Online services	100
Retail	97
Debt collectors	78
Utilities	70
Insurance	60

## Organisations and agencies with the largest numbers of complaints

The most complained about organisations and agencies are listed in Table 7.8.

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. In some cases, a high number of complaints may be received about a single issue affecting a large number of people.

**Table 7.8** Organisations and agencies with the largest number of complaints

Organisation	Number of complaints
Department of Immigration and Border Protection	904
Veda Advantage Information Services and Solutions Ltd	484
Cbus Superannuation	340
ANZ Bank Limited	104
Commonwealth Bank of Australia Limited	82
Telstra Corporation Limited	82
Westpac Banking Corporation	77
National Australia Bank Limited	76
St George Bank Limited	61
Department of Human Services	56

### Complaints closed during 2013–14

In 2013–14, the OAIC closed 2617 complaints, an increase of 74% on the number of complaints closed in 2012–13.

One of the OAIC's deliverables (see Chapter 2) is to finalise 80% of all privacy complaints within 12 months of receipt. In 2013–14, 97.5% of complaints were finalised within 12 months. In 2013–14, complaints were closed in an average of 2.8 months, an improvement on the previous financial year average of 3.7 months. Despite the 183.3% increase in complaints received in 2013–14, the OAIC is pleased to report that timeliness has been maintained.

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

The OAIC may decide not to investigate the matter or to cease an investigation if it is satisfied that a matter has been adequately dealt with or there has not been an interference with privacy. Otherwise, a Commissioner may make a determination about a complaint under s 52 of the Privacy Act. Table 7.9 provides more information about the stage at which complaints were closed.

**Table 7.9** Stage at which complaints were closed

Stage closed	Number of complaints	%
Without investigation	1693	64.7
Preliminary inquiries	641	24.5
Investigation	283	10.8
<b>Total</b>	<b>2617</b>	<b>100</b>

### Complaints closed without investigation

In 2013–14, the OAIC closed 64.7% of complaints without investigation. Where a complaint is closed without investigation the OAIC contacts the applicant to explain the reason for the decision not to investigate and, where appropriate, applicants will be referred to an organisation or agency that may be able to assist them.

The most common reasons for not investigating 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)).

### Reasons for closing complaints

Once the OAIC has confirmed that it has jurisdiction to investigate a complaint it tries, where possible, to resolve it at an early stage of the resolution process. 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. In limited situations the Commissioner may make a determination. Table 7.10 provides reasons for closing complaints under the Privacy Act, either with or without investigation. The total number of issues by jurisdiction exceeds the number of complaints closed because a complaint may raise more than one issue.

Of note is the high number of credit matters closed on the basis there was no interference with privacy. This is reflected in the increased number of complaints received prior to the changes to the credit reporting provisions introduced in March 2014 and the large number of people who sought to address concerns with their credit reports prior to those changes coming in to effect.

**Table 7.10** Reasons for closing complaints by jurisdiction

Reasons	APPs	NPPs	IPPs	Credit reporting	TFN or Spent convictions	Health-care Identifiers	No jurisdiction	Total
s 36	1	20	9	5	0	0	104	139
s 41(1)(a)	4	311	93	1213	4	1	37	1663
s 40(1A)	1	39	14	44	0	1	0	99
s 41(1)(c)	0	12	2	13	0	0	0	27
s 41(1)(d)	4	26	2	55	0	0	0	87
s 41(1)(e)	0	7	0	2	0	0	1	10
s 41(1)(f)	0	11	1	1	0	0	0	13
s 41(2)(a)	2	231	26	101	2	0	1	363
s 41(2)(b)	2	16	1	14	0	0	0	33
s 52	0	1	0	0	0	0	0	1
Other	10	128	19	82	1	0	3	243
<b>Total</b>	<b>24</b>	<b>802</b>	<b>167</b>	<b>1530</b>	<b>7</b>	<b>2</b>	<b>146</b>	<b>2678</b>

Key:

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

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

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

s 41(1)(c) — aware of alleged breach for more than 12 months

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

s 41(1)(e) — dealt with under another law

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

s 52 — Determination made by the Privacy Commissioner

Other — for example, withdrawn

A high proportion of total complaints received related to personal information held by credit providers as allowed by both the pre and post reform credit related provisions. A large number of these matters were declined as they did not raise an issue of substance under the Privacy Act. Credit related complaints are often resolved through conciliation by updating credit information, removing incorrectly listed defaults or debts or unlinking credit files that have been incorrectly linked. In some cases the resolution may include financial compensation where a complainant has incurred financial disadvantage.

### Nature of remedies achieved in complaints

Many complaints about alleged interferences with privacy are resolved informally by the OAIC's dispute resolution team. Table 7.11 provides further detail about the types of remedies achieved. The total number of remedies listed in Table 7.11 exceeds the total number of complaints as more than one remedy may have resulted for a particular complaint.



**Table 7.11** Complaints closed with a remedy obtained

Remedy	APPs	NPPs	IPPs	Credit reporting	Spent convictions and TFN	Total
Access provided	1	91	0	9	0	101
Apology	0	42	13	5	1	61
Changed procedures	0	19	6	2	1	28
Compensation up to \$1000	0	8	0	5	1	14
Compensation \$1001 to \$5000	0	11	5	2	0	18
Compensation \$5001 to \$10,000	0	4	3	1	1	9
Compensation over \$10,001	0	5	3	0	0	8
Counselled staff	0	10	4	0	0	14
Other remedy	0	35	4	21	0	60
Record amended	1	57	3	47	1	109
Staff training	0	13	4	0	0	17
<b>Total</b>	<b>2</b>	<b>295</b>	<b>45</b>	<b>92</b>	<b>5</b>	<b>439</b>

### Case study: Complaint about the disclosure of a credit file by a credit reporting agency

The OAIC received a complaint from an individual after they became aware that a third party had requested a copy of their credit file from a credit reporting agency and this was provided. The credit reporting agency was unable to locate a file to fulfil this request at first, but provided a credit file held under the complainant's previous name.

The complainant became aware of this disclosure, and advised the credit reporting agency that her current credit file and credit files under her other names contained inaccurate information. In response to the complaint, the credit reporting agency investigated the matter and outlined the matches of information between the files, including driver's licence, and made corrections to her credit files.

The complainant was not satisfied with this response and sought further corrections to her credit file, an apology and compensation for the disclosure of her information to a third party. The matter was resolved by conciliation and the respondent agreed to pay \$5000, made a written apology and made further corrections to her credit file.

### Case study: Complaint about a disclosure from a financial services company

The OAIC received a complaint after a financial services company changed the complainant's account password and provided the password and unique customer number to the complainant's relative. The complainant's relative accessed the complainant's accounts online.

The financial services company investigated the matter and acknowledged that human error had occurred and apologised to the complainant. The complainant was not satisfied with this response. The matter was resolved by conciliation and the respondent agreed to pay \$5000, and revised the steps it takes to protect the personal information it holds, including conducting appropriate identity checks.

### Case study: Complaint about the retention of information and use for another purpose

The complainant advised the OAIC that she had made an insurance claim. The insurance company advised her that it required seven years of medical information to process the claim. The complainant consented on the basis that the information would only be used for that purpose and would be destroyed once the claim was processed. After the claim was processed, the insurance company advised it would retain the information for use in future claims.

The complaint was resolved by the company returning any hard copy information it held about the complainant and by agreeing to delete the medical information it held in electronic form.

### Case study: Complaint about notice of possible disclosure of information

The complainant received a notice from the respondent agency to produce information relating to the complainant's tenant. The respondent subsequently disclosed to the tenant that the complainant was the informer. The complainant claimed the tenant became abusive and refused to vacate the property.

The respondent stated that the disclosure to the tenant was authorised by Commonwealth law, however the respondent did not notify the complainant that the tenant would be notified that information had been provided by the complainant. The matter was resolved through conciliation and the complainant accepted \$2000 in compensation.

## Complaints under privacy codes

Up until 11 March 2014 the Privacy Act allowed for organisations or groups of organisations to develop privacy codes to replace the NPPs as the legally enforceable privacy standards for those organisations.

Two NPP codes were in force until 11 March 2014:

- Queensland Club Industry Privacy Code
- Market and Social Research Privacy Code.

The OAIC did not receive any complaints under either of these codes in 2013–14.

From 12 March 2014 any APP entity or group of APP entities can develop a code of practice about information privacy (APP code) and seek registration by the Information Commissioner. For more information about APP codes see Chapter 6.

## Determinations

The Privacy Commissioner made one determination in 2013–14: *'BO' and AeroCare Pty Ltd* [2014] AICmr 32 (8 April 2014).

The complainant has a disability, a vision impairment, and at the time of the events had recently undergone treatment for a medical condition and surgery. The complainant was travelling by plane with a sighted guide from Queensland to Melbourne. The complainant and his associate checked in at the counter at the airport and then went to the gate area to wait to board the flight.

The complainant alleged that while he was seated in this public area and among other passengers he was approached by someone who asked him a range of personal and intrusive questions about his disabilities and fitness to travel. The complainant says the person did not introduce themselves or offer to take him somewhere more private for the discussion.

The complainant said AeroCare had interfered with his privacy by:

- collecting his personal medical information in an unreasonable and intrusive manner, by asking him a number of personal medical questions in the departure lounge of the airport
- disclosing his personal medical information to third parties in the departure lounge of the airport
- failing to advise him of the reason for the collection of his personal information.

The Privacy Commissioner found that the respondent had breached

- NPP 1.2 by collecting the complainant's personal information in an unreasonably intrusive way

- NPP 1.3 by failing to take reasonable steps to ensure that the complainant was aware of the reasons it was collecting his personal information
- NPP 4.1 by disclosing the personal information of the complainant.

The Privacy Commissioner considered the evidence provided by the complainant about the distress, hurt and humiliation he had experienced.

AeroCare was ordered to pay \$8500 in compensation for non-economic loss, to apologise in writing to the complainant and to review staff training in the handling of sensitive personal information. The Privacy Commissioner also required AeroCare to report on the results of that review within six months.

## Commissioner initiated 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 ‘Commissioner initiated investigations’ (CIIs). Prior to the amendments to the Privacy Act made under the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* on 12 March 2014, these investigations were known as ‘own motion investigations’, or OMIs.

When conducting a CII 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 2013–14, six new matters involving alleged interferences with privacy were assessed for investigation as OMIs (as all were received before 12 March 2014). The OAIC opened investigations into five of these matters. 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, data breach notifications or as a result of media coverage.

The OAIC uses its own risk assessment criteria to determine whether to open an investigation. This includes consideration of the following factors:

- 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 7.12 shows the total number of matters that were assessed for investigation in 2013–14 and the two preceding financial years.

**Table 7.12** Matters assessed for investigation by year

Year	Number of matters assessed for investigation
2013–14	6
2012–13	13
2011–12	37

Table 7.13 shows a breakdown of the most common issues that arose in OMI in 2013–14. 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 2013–14 include:

- a telecommunications company that inadvertently made spreadsheets of customer data, including silent line customers, publicly available on the internet
- a dating website network whose web servers were attacked, resulting in the theft of the personal information of millions of users worldwide, including 254,000 Australian users
- a security credentials company that failed to adequately secure its website, resulting in unauthorised access to applications for security credentials
- a medical centre that stored paper medical records relating to former patients in a garden shed at an unoccupied site.

**Table 7.13** Issues in OMI opened in 2013–14

Issues	Number of investigations
NPP 2 — improper use or disclosure	3
NPP 4.1 — data protection issues	5
NPP 4.2 — data retention issues	4

## Investigation reports

A number of issues that came to the attention of the OAIC in 2013–14 were matters of significant public concern. To promote community confidence and transparency of its regulatory activities, the OAIC published the following investigation reports that are available on the OAIC's website:

- Cupid Media Pty Ltd (June 2014)
- Multicard Pty Ltd (May 2014)
- Telstra Corporation Limited (March 2014)
- AAPT and Melbourne IT (October 2013).

## 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.

There is no specific obligation in the Privacy Act for agencies or organisations to report data breaches to the OAIC. 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*, including notifying the OAIC of data breaches.

However, s 75 of the *Personally Controlled Electronic Health Records Act 2012* (PCEHR Act) requires organisations and agencies to make mandatory DBNs to the OAIC in certain circumstances.

In 2013–14, the OAIC received 71 voluntary DBNs, a 16.4% increase from the number of DBNs received in 2012–13. While there is no specific obligation to report DBNs (other than those under s 75 of the PCEHR Act), many agencies and organisations do so as good privacy practice and as part of taking reasonable security steps.

In 2013–14, the OAIC received two mandatory DBNs under s 75 of the PCEHR Act. The OAIC also liaised with the Department of Health about other incidents relating to the PCEHR system which did not meet the criteria for mandatory DBN under the PCEHR Act. More information is available in the OAIC's *Annual report of the Information Commissioner's activities in relation to eHealth 2013–14*.

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. The OAIC's preferred regulatory approach is to work with entities to encourage compliance and best privacy practice. As such, the OAIC's enquiries into DBN incidents primarily focus on the data security measures that the entity had in place when the incident occurred and the steps taken to improve security practices in future to achieve the best privacy outcome for affected individuals. When considering the data security measures in place the OAIC has regard to its *Guide to information security*.

The OAIC may take no further action if it considers that the reporting entity had taken appropriate steps to respond to the data breach, including mitigating harm to affected individuals.

In cases where the OAIC is not satisfied with the voluntary action taken by the agency or organisation to resolve the matter, or where the nature of the breach warrants further action, a CII may be opened.

### Issues in data breach notifications

Incidents reported to the OAIC through DBNs in 2013–14 included:

- email and mail-out errors resulting in customers receiving the personal information of other customers

- the theft of secured personal information or storage device due to criminal activities, such as break and enter offences
- loss or misplacement of storage devices containing personal information
- improper disposal of paper records, leading to unauthorised disclosure of personal information
- improper implementation of websites, or failure to properly test, leading to unauthorised disclosure of personal information via the internet
- malicious hacking of secured systems, leading to unauthorised access to personal information.

Typically, the actions taken by entities in response to a data breach included system reviews and modification, written notifications to affected individuals, apologies, retrieval of records, changes in standard operating procedures and changes to systems 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 on Data Matching in Australian Government Administration*, which are voluntary guidelines to assist agencies to undertake data-matching activities that are not covered by the Data-matching Act 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

During 2013–14, the OAIC undertook three inspections of DHS customer records identified for review under the Data-matching Act. The inspections assessed the appropriateness of DHS’s handling of data-match review information against its obligations under both the Data-matching Act and the Privacy Act. The inspections were undertaken at the following DHS premises:

- Queanbeyan, NSW (August 2013)
- Surry Hills, NSW (November 2013)
- Queanbeyan, NSW (April 2014).

Each inspection reviewed a sample of one hundred data-match review cases. At the completion of each inspection, the OAIC prepared a report to the National Manager of the Business Integrity Division, DHS.

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 which are run under different laws authorising the use and disclosure of personal information for data-matching purposes.

In June 2014, the Information Commissioner issued revised voluntary data-matching guidelines called the *Guidelines on Data-Matching in Australian Government Administration* (Voluntary data-matching guidelines). The voluntary data-matching guidelines replace the previous *Guidelines for the Use of Data-Matching in Commonwealth Administration*, which were issued in 1998, and reflect the changes associated with the reforms to the Privacy Act.



The Voluntary data-matching guidelines set out a range of considerations for Australian Government agencies to address when undertaking data-matching activities, including requirements 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 2013–14, the Information Commissioner received seven program protocols for proposed data-matching activities by Australian Government agencies. A summary of these protocols is outlined below.

### Matching agency: Australian Taxation Office

#### *Carer Allowance Data-Matching Program (October 2013)*

The purpose of the protocol is to match carer allowance and carer health care card data against tax return data to verify taxpayers' eligibility for claimed tax offsets.

Source agency: Department of Human Services — Centrelink.

#### *Credit and Debit Card Data Matching Program (November 2013)*

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:

- American Express Australia Limited
- ANZ Group Limited
- Bank of Queensland Limited
- Bendigo and Adelaide Bank Limited
- BWA Merchant Services Pty Ltd
- Commonwealth Bank of Australia
- Diners Club Australia
- National Australia Bank Limited
- St George Bank
- Westpac Banking Corporation.

#### *Local Government Payments Data-Matching Program (January 2014)*

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

Source agencies: local government council and shire authorities throughout Queensland, New South Wales, Victoria, Tasmania, South Australia, Western Australia and the Northern Territory.

*Online Selling Data-Matching Program (2012 and 2013 financial years) (March 2014)*

The purpose of the protocol is to match online sales data with taxpayer records to identify taxpayers who did not report or under reported income in the 2012 and 2013 financial years.

Source agency: eBay Australia and New Zealand Pty Ltd.

*Medicare Levy Exemption Data-Matching Program (May 2014)*

The purpose of the protocol is to match Medicare data against taxpayer records to ensure individuals are complying with their Medicare levy obligations.

Source agency: Department of Human Services — Medicare.

**Matching agency: Comcare**

*Injured Worker Data-Matching Program Protocol (October 2013)*

The purpose of the protocol is to match taxpayer records against Comcare's records to ensure that recipients of incapacity payments are claiming the correct entitlements.

Source agency: Australian Taxation Office.

**Matching agency: Department of Human Services**

*Department of Human Services New Compliance Data Sources Data-Matching with the Department of Education (May 2014)*

The purpose of the protocol is to match Family Day Care educators and operators data against welfare payment records to identify individuals who are receiving unreported income while still collecting welfare payments.

Source agency: Department of Education.

## Assessments

Prior to 12 March 2014 the Information Commissioner had the power to conduct privacy audits of Australian and ACT Government agencies, as well as some private sector organisations in certain circumstances. These audit powers included:

- 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 using the above powers, the Information Commissioner could audit a private sector organisation only where the organisation requested this under s 27(3) of the Privacy Act.

Under the reforms to the Privacy Act, made by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*, audits are now known as ‘assessments’. Under s 33C of the Privacy Act, from 12 March 2014 the Information Commissioner now has the power to conduct assessments of agencies and organisations in relation to:

- the Australian Privacy Principles — s 33C(1)(a)(i)
- a registered APP code — s 33C(1)(a)(ii)
- credit information files and credit reports held by credit reporting agencies and credit providers — s 33C(1)(b)
- tax file number recipients — s 33C(1)(c)
- data matching programs — s 33C(1)(d)
- claims information associated with the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme — s 33C(1)(e).

Additionally, s 28A(1)(c) of the Privacy Act gives the Commissioner the ability to examine the records of the Commissioner of Taxation in relation to tax file numbers and tax file number information.

The Commissioner also has the power under s 309 of the *Telecommunications Act 1997* to monitor compliance with certain record keeping requirements of telecommunications organisations.

In 2013–14, the OAIC commenced four audits or assessments and finalised two under the Privacy Act. The OAIC also completed one audit and continued to progress a second audit which had both commenced in the previous financial year. These totals do not include audits and assessments relating to eHealth, which are discussed separately below.

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

An audit or assessment is a snapshot of personal information handling practices relating to the entity at a particular time and place. Entities are encouraged to consider audit and assessment findings broadly, and recognise that the issues identified may foster improvements beyond the particular aspect of their business operations subject to the audit or assessment.

OAIC audits and assessments are educative processes that seek to demonstrate that compliance with the Privacy Act is part of good management practice. Audits and assessments have been the catalyst for improvements to agencies’ data security, accuracy of information, staff training and disclosure policies.

## 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 factors which include previous audits and audit findings, complaints about ACT Government agencies, the amount of personal information held by an agency and the sensitivity of, and risks to, that information.

In 2013–14, the OAIC finalised two ACT Government audits.

### *ACT Education and Training Directorate*

This OAIC audit commenced in the 2012–13 financial year, and examined the Education and Training Directorate’s revised policy and guidelines with respect to third party access to student records (where the student is under 18 years), including where the personal information accessed is sensitive in nature. The audit fieldwork was undertaken in late June 2013 and the report was finalised and published on the OAIC website in December 2013.

### *Canberra Institute of Technology*

The OAIC audit examined the Canberra Institute of Technology’s collection of student information, the notifications provided to students during collection and the security safeguards in place to protect student information held. The audit fieldwork was undertaken in early December 2013, and the final report was finalised and published on the OAIC website in April 2014.

## 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 relates to the National Document Verification Service (DVS).

The DVS system allows authorised government agencies and specific organisations (that is, DVS ‘users’) to verify, online and in real time, the authenticity of an individual’s Evidence of Identity (EOI) documents sourced from another government agency (that is, DVS ‘issuers’). 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.

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

In 2013–14, the OAIC undertook two identity security audits related to the DVS and are explained below.

#### *Australian Taxation Office*

The OAIC commenced an audit of the ATO's use of the DVS system, to ensure the accuracy and completeness of personal information. The audit fieldwork was undertaken in late July 2013 and a draft report issued in May 2014. The finalisation of the report was ongoing as at 30 June 2014.

#### *Department of Human Services (Medicare)*

The OAIC commenced an assessment of security issues and the collection of personal information by the Department of Human Services (Medicare) in its role as a DVS issuer agency, and with regard to its obligations under the Australian Privacy Principles. The audit fieldwork was undertaken in March 2014 and the report was ongoing as at 30 June 2014.

### **Australian Customs and Border Protection audits**

The OAIC has an MOU with the Australian Customs and Border Protection Service (ACBPS) to conduct one audit each year of an aspect of ACBPS handling and use of Passenger Name Record (PNR) data. The MOU also has regard to an agreement between the Australian Government and the European Union (EU) for the provision of PNR data to the ACBPS, which contains provision for the OAIC to conduct oversight and accountability functions in relation to ACBPS handling of EU-sourced PNR data.

Where appropriate, the audit teams made recommendations in relation to privacy practices, and also made observations in relation to ACBPS' separate obligations under the agreement with the EU. The OAIC does not publish all ACBPS PNR audit reports on the OAIC website as some reports contain information that may affect the operational security of ACBPS.

In 2013–14, the OAIC commenced and finalised one PNR audit carried forward (with the agreement of ACBPS) from the 2012–13 financial year. The OAIC also commenced one PNR assessment under the 2013–14 MOU agreement.

#### *Passenger Name Record: Implementation of Recommendations*

The OAIC audit examined how the ACBPS had addressed all prior audit recommendations made by the OAIC (and former Office of the Privacy Commissioner) since 2008, at both the Passenger Analysis Unit in Canberra and in Airport Operations rooms located in selected international airports around Australia. The audit fieldwork was undertaken in January 2014, with the final report issued in June 2014. The audit was published on the OAIC website in July 2014.

#### *Passenger Name Record: Melbourne Airport Operations*

The OAIC assessment examined how the ACBPS Melbourne international airport operations room handled PNR data (including data sourced from the EU) in accordance with its security obligations under APP 11. The audit fieldwork was undertaken in May 2014 and was ongoing as at 30 June 2014.

## eHealth audits and assessments

The *Personally Controlled Electronic Health Records Act 2012* (Cth) (PCEHR Act) establishes the personally controlled electronic health record (PCEHR) system. The PCEHR System Operator is currently the Secretary of the Department of Health. The OAIC has various enforcement and investigative powers in respect of the PCEHR system, under both the PCEHR Act and the Privacy Act.

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. 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's eHealth audit and assessment activities were carried out under its MOU with Health (discussed in Chapter Six). During 2013–14, the OAIC began five audits/assessments relating to the PCEHR system and HI service, and continued with two audits begun in the 2012–13 period. In 2013–14, the OAIC completed three of these audits/assessments, with the remaining audits/assessments in the final stages at 30 June 2014. These are described in more detail below.

### *PCEHR system: PCEHR System Operator audits*

The OAIC undertook two audits of the PCEHR System Operator.

The first audit, which commenced in May 2013, considered the System Operator's policies and procedures for the collection of personal information during the PCEHR consumer registration process. The purpose of this audit was to assess whether the System Operator's policies and procedures were consistent with its obligations under IPPs 1 to 3. At 30 June 2014, the OAIC was awaiting final comments from the System Operator on the audit report.

The second audit examined the storage and security of personal information held in the National Repositories Service. The National Repositories Service is the database system which holds eHealth records, and includes information such as shared health summaries, event summaries, discharge summaries, specialist letters, consumer entered health summaries and consumer notes.

The objective of the audit was to consider whether the System Operator had taken reasonable steps to protect personal information held in the National Repositories Service from loss, unauthorised access, use, modification or disclosure or other misuse. The audit commenced in November 2013. At 30 June 2014, the OAIC was awaiting final comments from the System Operator on the audit report.

### *PCEHR system: Assisted registration policies assessment*

This assessment reviewed the assisted registration policies of ten healthcare provider organisations undertaking assisted registration. Under the *PCEHR (Assisted Registration) Rules 2012*, healthcare provider organisations are permitted to provide services to

assist consumers to register for an eHealth record. These organisations are required to have policies in place setting out certain matters relating to the conduct of assisted registration, including the authorisation and training of employees, recording of consumer consent and processes for consumer identification.

The assessment considered how these policies addressed the privacy obligations set out in APPs 3 and 11, relating to the collection and security of personal information. The assessment commenced in February 2014. At 30 June 2014, the OAIC was awaiting final comments from the System Operator on the assessment report.

*PCEHR system: Western Sydney Medicare Local assessment*

This assessment considered Western Sydney Medicare Local (WSML) assisted registration practices. The objective of this assessment was to assess the extent to which WSML, in the course of conducting assisted registration, handled personal information in accordance with APP 3 (collection), APP 5 (notice of collection) and APP 11 (security of personal information). The assessment commenced in March 2014. At 30 June 2014, the OAIC was awaiting final comments from the System Operator on the assessment report.

*PCEHR system: Calvary Health Care ACT assessment*

This assessment reviewed Calvary Health Care ACT's (Calvary) privacy policy and privacy collection notice, including as they relate to the PCEHR system and HI service. The objective of the assessment was to assess Calvary's privacy policy and collection notice to determine Calvary's readiness for and compliance with the requirements under APPs 1 and 5. The assessment commenced in February 2014 and was finalised in June 2014.

*HI service: HI Service Operator audits*

The OAIC undertook two audits of the HI Service Operator.

The first audit, which commenced in May 2013, focused on the HI Service Operator's collection, use and disclosure of Individual Healthcare Identifiers and Healthcare Provider Identifiers–Individual (HPI-I) and associated identifying information. The purpose of the audit was to assess whether the Service Operator's handling of HI information was in accordance with the IPPs, the HI Act and the *Healthcare Identifiers Regulations 2010* (HI Regulations). The audit was finalised in April 2014.

The second audit considered the HI Service Operator's storage and security of personal information held on the database of HPI-Is. The objective of this audit was to assess the extent to which the Service Operator maintained records in accordance with the IPPs, specifically IPP 4, and the relevant terms of the HI Act and the HI Regulations which relate to the storage and security of personal information pertaining to HPI-Is. The audit commenced in October 2013 and was finalised in June 2014.

*HI service: Calvary Health Care ACT assessment*

This assessment reviewed Calvary's privacy policy and privacy collection notice, including as they relate to the HI service.

More information is available in the OAIC's *Annual report of the Information Commissioner's activities in relation to eHealth 2013–14*.

## Personal Information Digest and APP 1

Prior to 12 March 2014, IPP 5.3 of the Privacy Act required each Australian Government agency covered by the Privacy Act, to keep a record detailing:

- the nature of records of personal information kept by the agency
- 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 records were provided to the OAIC in June of each year, and subsequently compiled and published as the 'Personal Information Digest'. With the commencement of the Privacy Act reforms on 12 March 2014, these requirements have been replaced by the requirements in APP 1, which include an agency having a clearly expressed and up-to-date APP privacy policy about how it manages personal information and for the policy to be freely available (usually on its website).







**Part D**  
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# Chapter Eight

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## Freedom of information policy and compliance

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Overview	108
Responding to FOI enquiries	109
Reviewing FOI decisions	110
FOI complaints and investigations	113
Own motion investigations	117
FOI complaint investigation recommendations	117
Extensions of time	118
Vexatious applicant declaration requests	119
Information Publication Scheme	120
Disclosure log	120
Assisting agencies	121
Assisting the public	123
Other developments	124

# Chapter Eight

## Freedom of information policy and compliance

### Overview

2013–14 was the third 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 finalising 646 applications for Information Commissioner review (IC review) (up 54.2% from 2012–13), 119 freedom of information (FOI) complaints (down 20.1%, due to the drop in FOI complaints received in 2013–14), 2456 extension of time requests and notifications (up 7.2%), and responding to 1903 enquiries.

During 2013–14, the OAIC significantly reduced the backlog of IC reviews and complaints that existed at the start of the reporting year. At the beginning of 2013–14, the oldest unacted IC review application was 206 days old; at the end of the year, the oldest such matter was 40 days old. The number of IC reviews on hand was reduced by more than 100.

Table 8.1 shows the total number of IC reviews received and closed by the OAIC since 2010.

**Table 8.1** IC reviews received and closed since 2010

	2010–11 (from 1 November)	2011–12	2012–13	2013–14	Total number of IC reviews
Received	176	456	507	524	1663
Closed	29	253	419	646	1347

The OAIC provided a range of advice on FOI matters, including updating eight of the 15 parts of the *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines) and releasing a new agency resource.

On 13 May 2014, the Australian Government announced as part of the 2014–15 Budget that the OAIC will be disbanded from 31 December 2014. The OAIC's FOI functions will be exercised by the Attorney-General's Department (FOI guidelines and annual reporting), the Administrative Appeals Tribunal (AAT) (FOI merits review functions) and the Commonwealth Ombudsman (FOI complaint handling).

## 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 2013–14, the enquiries line received 16,491 telephone calls, 790 of which specifically related to FOI matters that were within the jurisdiction of the OAIC. A further 526 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, fax or our online form. Of the 3789 written enquiries received by the OAIC in 2013–14, 460 related to FOI matters that were within jurisdiction of the OAIC. A further 127 written enquiries were received about FOI matters out of jurisdiction.

In total, the OAIC received 1903 phone and written FOI enquiries (including those out of jurisdiction).

The OAIC is committed to responding to 90% of written enquiries within 10 working days. This benchmark was met in 2013–14, with 90% of FOI-related written enquiries responded to within 10 working days.

Table 8.2 sets out the types of enquirers who sought information from the enquiries line about FOI in 2013–14, including written and telephone enquiries. 69.5% of enquiries were from individuals, and 25.6% from Australian Government agencies.

**Table 8.2** Types of FOI enquirers

Enquirer type	Number of enquiries
Individuals	1322
Australian Government	488
Legal, accounting and management services	25
State government	12
Business and professional associations	12
Media	11
Personal services (including employment, child care, vets)	7
Political and lobbying	7
Local government	4
Education	3
ACT Government	2
Agriculture, Forestry, Fisheries	2
International government	2
Transport	2
Travel and hospitality industry	2
Health service providers	1
Finance (including superannuation)	1

Table 8.3 provides a breakdown of the types of enquiries made to the OAIC during 2013–14. Approximately 65% of all calls about FOI matters related to general processes for FOI applicants, including how to make an FOI request or complaint or seek review of a decision. This table includes statistics on both written and telephone enquiries.

**Table 8.3** Breakdown of issues in FOI enquiries received

Issue	Number of enquiries
General processes	813
Agency statistics	254
Processing by agency	244
Access to general information	36
Access to personal information	30
Information Publication Scheme	17
Vexatious application	5
Amendment and annotation	4

## Reviewing FOI decisions

The FOI Act provides that an FOI applicant who disagrees with an FOI decision made by an agency 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.

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

An 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 the 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](http://www.austlii.edu.au).

In 2013–14, the OAIC received 524 applications for IC review (up 3.4%). In 488 applications (or 93.1% of all applications), IC review applicants sought review of access refusal decisions, including decisions on charges or amendment of personal records; 14 applications were for review of access grant decisions. Details of the agencies whose decisions were the subject of IC review applications in 2013–14 are given in Chapter Nine.

The OAIC closed 646 IC reviews in 2013–14 (up 54.2%). Table 8.4 shows the outcome for all of these IC reviews. Ninety-eight (15.2%) were concluded through published decisions by the Information Commissioner, the FOI Commissioner or the Privacy Commissioner. Ministers' and agencies' decisions were affirmed in 40 of those published decisions (40.1%), and set aside or varied in 58.

**Table 8.4** Information Commissioner reviews by outcome

Information Commissioner decision	Number
s 54N — out of jurisdiction or invalid	59
s 54R — withdrawn	111
s 54R — withdrawn/conciliated	69
s 54W(a) — deemed acceptance of preliminary view or appraisal	27
s 54W(a)(i) — lacking in substance	170
s 54W(a)(ii) — failure to cooperate	62
s 54W(a)(iii) — lost contact	0
s 54W(b) — refer to AAT	41
s 54W(c) — failure to comply with direction	0
s 55F — set aside by agreement	1
s 55F — varied by agreement	1
s 55F — affirmed by agreement	1
s 55G — substituted	6
s 55K — affirmed by IC	40
s 55K — set aside by IC	53
s 55K — varied by IC	5
<b>Total</b>	<b>646</b>

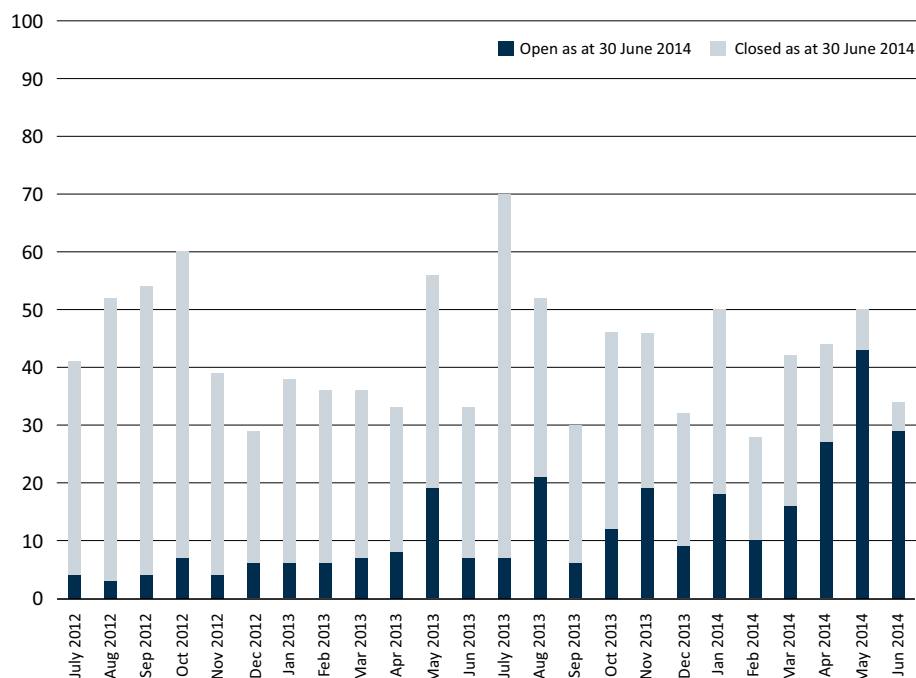


Fifty-nine applications for IC review were outside the jurisdiction of the OAIC or invalid. To be valid, an IC review application must meet the requirements set out in s 54N of the FOI Act. These requirements include that an application must be made in writing, and the applicant must provide the OAIC with a copy of the decision that they want reviewed. Each time that an invalid application was received, 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.

In 2013–14, three matters were finalised by agreement under s 55F (by way of written agreement between all parties to the IC review), 69 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). 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 over the last two reporting periods. The darker part of each bar indicates the number of IC reviews received in each month and still on hand on 30 June 2014.

**Chart 8.1** IC reviews received by month

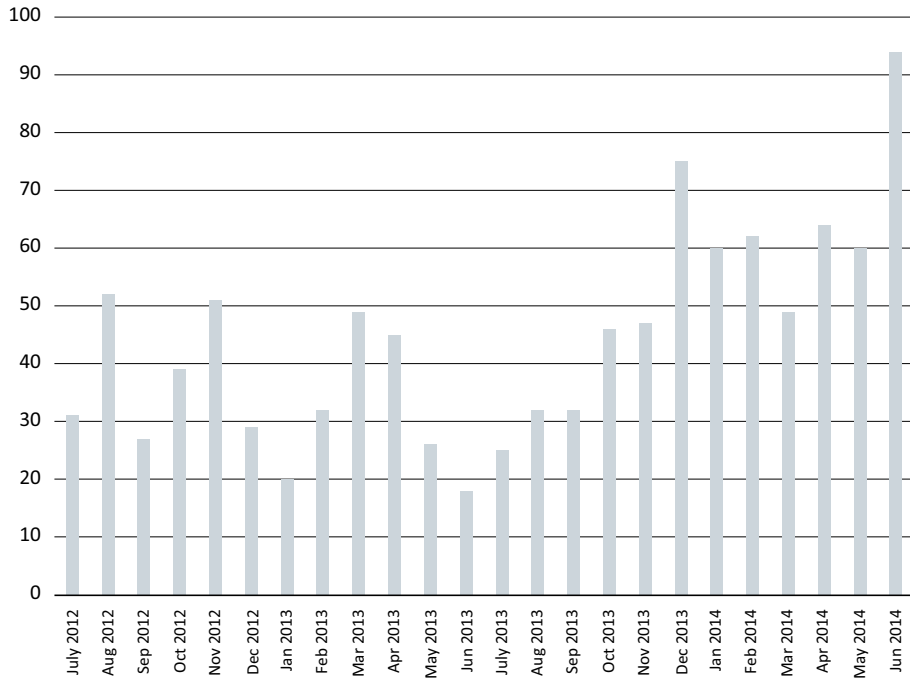


In 2013–14, the OAIC streamlined its processes for handling IC reviews and FOI complaints to address delays and a large backlog of unactioned matters. In 2012–13, the OAIC finalised 419 IC reviews; in 2013–14 it finalised 646. While the number of matters received increased slightly (from 507 to 524), the number of matters on-hand reduced by 122 between 30 June 2013 and 30 June 2014 (from 447 to 325).

One of the OAIC’s deliverables (see Chapter Two) is to finalise 80% of all IC review applications within 12 months of receipt. In 2013–14, 71.2% were finalised within 12 months of receipt.

The improvement in processing rates of IC reviews is clear from Chart 8.2, which shows the number of IC reviews closed by the OAIC over the last two reporting periods.

**Chart 8.2** IC reviews closed by month



## 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.

An individual 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 deems appropriate. 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 Information 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 Nine.

In 2013–14, the OAIC received 77 FOI complaints compared with 148 in 2012–13. The OAIC finalised 119 complaints in 2013–14. Table 8.5 shows the total number of complaints received and closed since 2010–11.

**Table 8.5** FOI complaints received and finalised since 2010–11

	2010–11	2011–12	2012–13	2013–14	Total number of FOI complaints
Received	88	126	148	77	439
Closed	39	100	149	119	407

Table 8.6 lists the agencies about which two or more complaints were made to the OAIC during 2013–14. The Department of Human Services (DHS) and the Department of Immigration and Border Protection (DIBP) continue to be the subject of the largest numbers of complaints, but this must be considered in the context of the high number of FOI requests that they each process.

**Table 8.6** Respondent agencies with two or more complaints

Agency	Complaints received
Department of Human Services	20
Department of Immigration and Border Protection	10
Department of the Prime Minister and Cabinet	4
Department of Veterans' Affairs	4
Australian Securities and Investments Commission	4
Australian Taxation Office	3
Australian Federal Police	3
Department of Employment	2
Australian Crime Commission	2
Department of the Treasury	2

Table 8.7 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.

**Table 8.7** Issues raised in FOI complaints received in 2013–14

Issue	Number of complaints
Processing delay	35
Unsatisfactory customer service	16
Agency failure to acknowledge request	14
Agency failure to assist with application	9
Processing error	5
Unsatisfactory reasons for decision	6
Inadequate search	4
Incorrect application of law	3
Excessive charges	3
Information Publication Scheme	2
<b>Total</b>	<b>97</b>

The most frequently raised issue in FOI complaints in 2013–14 was processing delay (in 35 complaints or 45.5% 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 can be 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. The OAIC has encouraged 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 (16 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 number of complaints related to FOI applications being rejected because an agency had taken a highly legalistic or technical approach to a request rather than seeking to first clarify the scope of the request with the applicant.

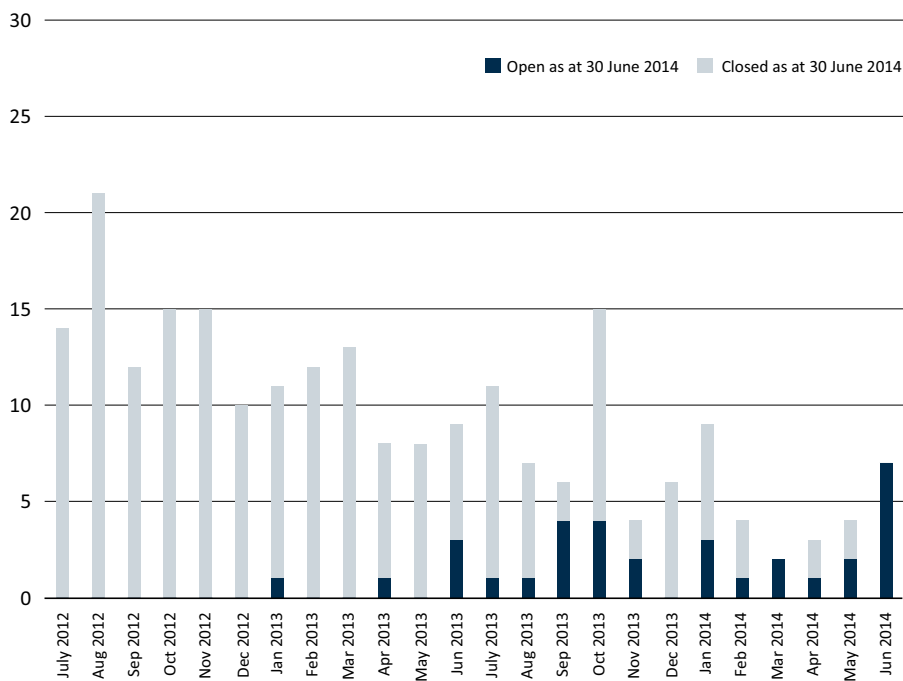
The 77 FOI complaints received by the OAIC in 2013–14 raised 97 separate issues. Table 8.8 indicates the way that those complaint issues were finalised.

Thirty-four complaints were withdrawn by the complainant. Fifteen 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 8.8** Method for finalising complaint issues

Finalisation method	Number of complaints
s 70 — not in jurisdiction	23
s 73(a) — not exercising power	2
s 73(b) — merits review	1
s 73(d)(i) — adequately dealt with	28
s 73(d)(ii) — dealing with complaint	2
s 73(e) — frivolous, vexatious, lacking in substance	29
s 86 — no recommendations made	11
s 86 — recommendations made	7
Complaint withdrawn	34
Complaint conciliated and withdrawn	15

Chart 8.3 shows the number of FOI complaints received by the OAIC over the last two reporting periods. The darker part of each bar indicates the number of complaints received in each month and still on hand at 30 June 2014.

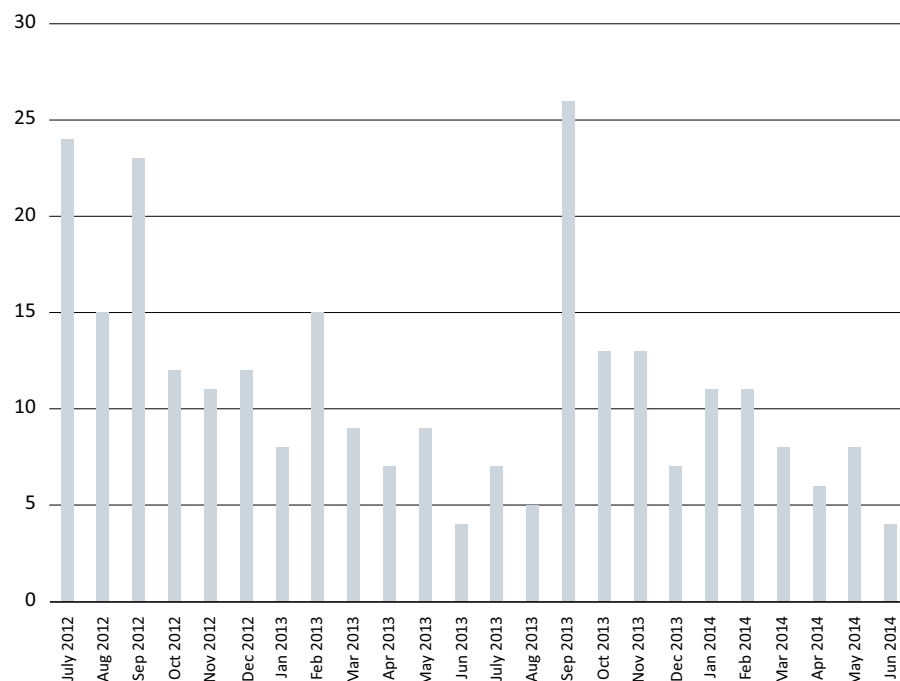
**Chart 8.3** FOI complaints received by month

On 30 June 2014, the OAIC had 33 complaints on hand, a significant reduction from the 75 matters on hand on 1 July 2013.

One of the OAIC's deliverables (see Chapter Two) is to finalise 80% of all FOI complaints within 12 months of receipt. In 2013–14, 82.3% of complaints were finalised within 12 months of receipt.

Chart 8.4 shows the number of complaints closed by the OAIC over the last two reporting periods.

**Chart 8.4** FOI complaints closed by month



## Own motion investigations

The Information Commissioner may undertake an FOI own motion investigation, which may consider a single agency action or a systemic or recurring issue in an agency's FOI practices and processes. No FOI own motion investigations were undertaken in 2013–14.

## FOI complaint investigation recommendations

On completion of an FOI 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.

In 2013–14, the Information Commissioner made four sets of investigation recommendations:

- on 23 January 2014, to the Department of Veterans' Affairs, in relation to its practices for handling requests from frequent FOI applicants
- on 14 March 2014, to DIBP, in relation to its approach to assessing the validity of FOI requests for statistical information
- on 28 March 2014, to Comcare, in relation to its approach to handling requests for information that could be processed under the *Safety, Rehabilitation and Compensation Act 1988* as well as the FOI Act
- on 16 June 2014, to DIBP, in relation to its approach to assessing the validity of requests made via the website [righttoknow.org.au](http://righttoknow.org.au).

The formal recommendation mechanism can lead to improvements in an agency's FOI processes. For example (as noted in the 2012–13 Annual Report), in June 2013, the Information Commissioner made investigation recommendations to the Fair Work Commission (FWC) in relation to its use of precedent letters and templates. In July 2013, the FWC advised the OAIC of the steps it had taken to implement those recommendations. These included a review of its precedent letters and the development of a procedures manual for its staff.

## 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 2456 extensions of time in 2013–14. Table 8.9 shows the number of notifications and extension of time requests finalised in 2013–14, 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 8.9** Notifications and extension of time requests finalised

Request type	Granted or acknowledged	Granted but varied	Granted with conditions	Not granted	Invalid request	Queried	Withdrawn	Total number of requests
s 15AA	1889	0	0	0	8	1	0	1898
s 15AB	285	9	3	11	10	0	44	362
s 15AC	14	2	103	8	4	0	1	132
s 54B	0	0	0	0	0	0	1	1
s 54D	2	0	21	0	7	0	1	31
s 54T	19	0	0	10	0	0	3	32
<b>Total</b>	<b>2209</b>	<b>11</b>	<b>127</b>	<b>29</b>	<b>29</b>	<b>1</b>	<b>50</b>	<b>2456</b>

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 54B — extension of time for application for internal review

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.

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. These provisions, and the opportunity for IC review of deemed decisions, result in greater agency accountability 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 considers 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 the 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 Information Commissioner to make a declaration or the



Information Commissioner can act on his or her own motion. A vexatious applicant declaration is not an action that the Information Commissioner will undertake lightly, but its use may be appropriate at times. A declaration by the Information Commissioner can be reviewed by the AAT.

During 2013–14, the Information Commissioner received six applications from agencies, under s 89K, seeking to have a person declared a vexatious applicant. Eight applications were finalised in 2013–14: four declarations were made under s 89K, three applications were refused and one was withdrawn.

The three applications that were refused related to the same FOI actions. After meeting with the agency and a person against whom the applications were sought, the Information Commissioner was not satisfied the grounds for making an application had been made out.

## **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.

The OAIC has published guidance material to help agencies review their compliance with the IPS, and advice about how to structure IPS information on agency websites.

In 2013–14, the OAIC began planning the delivery of the next phase of the 2011–16 IPS compliance review. Under s 9 of the FOI Act, an agency must, in conjunction with the Information Commissioner, complete a review of the operation of the agency's IPS every five years. In line with this requirement, the OAIC previously published an IPS self-assessment tool and carried out a major survey of agencies about their compliance with IPS obligations. A second survey was scheduled for 2015. However, with the Government's announcement in May 2014 of the OAIC's closure, planning for the survey was discontinued.

## **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 FOI 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 FOI disclosure log information about any person if publication of that information would be unreasonable.

In 2013–14, the Information Commissioner assisted agencies, ministers and the public to understand the FOI disclosure log requirements by updating the FOI Guidelines, and by providing written and verbal responses to requests for information and advice.

Information is also collected from agencies and ministers on FOI disclosure log activity. Further information on agency FOI activity can be found in Chapter Nine.

Under s 11C(2) of the FOI Act, the Information Commissioner can determine that the FOI disclosure log requirement does not apply to specific kinds of information. In October 2013, following a public consultation process, the Information Commissioner made *Disclosure Log Determination No 2013–1 (Exempt documents)*. The determination operates in cases where an agency or minister gives an FOI applicant access to:

- an exempt document, as permitted by s 3A of the FOI Act. This allows agencies and ministers to decide that it is appropriate to give access to a particular applicant but unreasonable to publish information in the document more widely.
- a document that would have been exempt, if requested by anyone other than the applicant. This applies in cases where a document contains information about the applicant that does not clearly fall under one of the existing FOI disclosure log exceptions.

The determination was made for a period of five years, in identical terms to a determination that operated for two years from October 2011.

## 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 Nine.

As a specialist FOI regulator, the OAIC has been uniquely able to develop a consistent jurisprudence that is informed by the pro-disclosure objects of the FOI Act and by the practical realities of FOI processing. The OAIC brings this practical approach to its decision making, and to its role in assisting agencies to meet their obligations under the FOI Act. This approach is exemplified by two IC reviews decided during the reporting period.

The issue in *'AP' and Department of Human Services* [2013] AICmr 78 was whether the work involved in processing the FOI applicant's request would substantially or unreasonably divert DHS's resources from its other operations. DHS claimed that it would, based on its estimate of the work required. The OAIC obtained a sample of the documents in issue, and an OAIC officer assessed and edited that sample. Based on that assessment, a more reliable (and much lower) estimate was obtained. The IC review decision was that the amount of work involved in processing all of the documents would not substantially or unreasonably divert DHS's resources.

In *'BZ' and Department of Immigration and Border Protection* [2014] AICmr 55, DIBP declined to provide the FOI applicant with a copy of the video footage that he had sought, blurred so as to obscure the face of a third party. DIBP said that it would cost almost \$4000 to edit the footage. An OAIC officer prepared an edited copy of the footage in which the third party's face was obscured. This took less than an hour, using software that cost less than \$100. The IC review decision was that access be granted to the edited footage.

In *Cornerstone Legal Pty Ltd and Australian Securities and Investment Commission* [2013] AICmr 71, the Information Commissioner foreshadowed that he would later write to the Australian Securities and Investments Commission (ASIC) to inquire what steps it had taken to implement observations of the Information Commissioner in the decision that ASIC should adopt a more flexible approach in responding to FOI requests for reports from external administrators. The matter was later taken up between the OAIC and ASIC, in writing and orally. ASIC confirmed that it had drawn the Information Commissioner's decision to the attention of its FOI decision makers, and that their practice is to examine requests individually having regard to the documents in question, and not apply a class exemption approach in dealing with such requests.

## FOI Guidelines

Agencies must have regard to the *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (FOI Guidelines) 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.

Eight of the 15 parts of the FOI Guidelines were updated in 2013–14 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. The updates included:

- revising Parts 3, 4, 7, 14 and 15 to reflect reforms to the *Privacy Act 1988* (Privacy Act) that commenced on 12 March 2014
- expanding the discussion in Part 2 about the definition of an 'official document of a minister'
- amending Part 4 to provide new advice about public interest factors that may apply when considering whether to reduce or waive a charge
- updating Part 5 to reflect new IC review decisions and legislative amendments impacting on exemptions
- providing new guidance in Part 9 about internal review best practice.

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 2013–14 the OAIC published a new FOI agency resource on third party review rights. The resource explains when agencies may need to consult a person or business after receiving an FOI request for documents containing information about them. A series of flowcharts illustrates available review rights and applicable notification requirements.

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

### Other guidance material

The OAIC published other guidance material including answers to commonly asked agency questions about:

- how agency websites should explain the FOI Act and other access to information procedures
- structuring Commonwealth contracts to comply with s 6C of the FOI Act
- applying for the Information Commissioner to issue an IPS or FOI disclosure log determination under s 8(3) or s 11C(2).

### FOI advice provided

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

- agency obligations under s 6C (requirements for documents held by contractors)
- exemptions
- third party review rights
- giving access to documents in the form requested by the applicant
- consultation with state or territory Governments under s 26A
- the IPS — including the obligation to publish details of statutory appointments under s 8(2)(d) and review requirements in s 9
- how a delay in giving access to documents affects the timeframes for an FOI applicant to apply for internal and IC review
- whether particular bodies constitute an 'agency' under the FOI Act
- online accessibility obligations when providing notices to applicants
- agency reporting obligations
- presentations delivered at Information Contact Officer Network meetings
- speeches on FOI by the Commissioners.

### 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. This includes:

- general information about the OAIC and the FOI process
- fact sheets covering a range of issues including charges, exemptions, review rights and how to make a complaint.

## Other developments

### Amendment of the FOI Act and Regulations

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

An amendment in the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* came into force on 12 March 2014 as part of the privacy law reforms discussed in Chapter Six. It replaced the definition of ‘personal information’ in s 4 of the FOI Act with a reference to the definition in the Privacy Act.

An amendment in the *Rural Research and Development Legislation Amendment Act 2013* came into force on 13 December 2013. It replaced the reference to the *Primary Industries and Energy Research Development Act 1989* in Part III of Schedule II with a reference to the *Primary Industries Research and Development Act 1989*.

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

### Hawke Review of the FOI Act and AIC Act

Section 93B of the FOI Act and s 33 of the AIC Act required a review of both Acts to be undertaken two years after the 2010 FOI reforms. Dr Allan Hawke AC commenced that review in October 2012, and provided a report to Government that was tabled in Parliament on 2 August 2013.

In 2012–13, the Information Commissioner and the FOI Commissioner made two substantial submissions to Dr Hawke, which made 35 proposals for reform and included a comprehensive list of technical issues with both Acts.

Dr Hawke’s report contained 40 recommendations, some agreeing with the Commissioners’ proposals. In October 2013, the Commissioners wrote to the Attorney-General, supporting some of Dr Hawke’s recommendations and suggesting alternatives to others. The attachment to the letter, which contained the Commissioners’ views on each recommendation, was published on the OAIC website in November 2013.

### Submission to the Australian Law Reform Commission review of copyright

In August 2013, the OAIC made a second submission to the Australian Law Reform Commission’s inquiry into copyright and the digital economy. The submission responded to Discussion Paper 79 and explained issues arising in relation to the *Copyright Act 1988* as it interacts with the IPS and disclosure log provisions in the FOI Act.

The OAIC submission addressed the issue of agencies unintentionally accruing copyright over unpublished third party material when publishing documents on their disclosure logs. The OAIC also noted that the Information Commissioner would potentially need to make a FOI disclosure log determination covering material where publication would have an unreasonable impact on copyright owners.

# Chapter Nine

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## Agency freedom of information

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Overview	126
Requests for access to documents	126
Applications for amendment of personal records	140
Charges	141
Disclosure log	143
Review of FOI decisions	144
Complaints about agency FOI actions	151
Impact of FOI on agency resources	152
Impact of the Information Publication Scheme on agency resources	157
OAIC expenditure on FOI functions	159

# Chapter Nine

## Agency freedom of information

### 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.<sup>1</sup>

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 this chapter) shows the total number of FOI requests received each year since the commencement of the FOI Act in 1982.

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<sup>1</sup> 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 2009–10 to 2013–14

2009–10	2010–11	2011–12	2012–13	2013–14
21,587	23,605	24,764	24,944	28,463

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 in 2013–14 was the highest since the 2010 reforms. Australian Government agencies received 28,463 FOI requests in 2013–14, up 14.1% on the number received in the previous year. Request numbers increased 9.3% in 2010–11, 4.9% in 2011–12 and 0.7% in 2012–13.

Despite the increase in overall request numbers in 2013–14, some agencies received fewer requests and reported anecdotally a decrease in the complexity of those requests. However, in recent years, the general trend reported anecdotally by agencies is 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 2010 reforms and the establishment of the OAIC.

### Number of FOI requests received by different agencies

In 2013–14, the Department of Immigration and Border Protection (DIBP), the Department of Human Services (DHS) and the Department of Veterans' Affairs (DVA) together continued to receive the majority of FOI requests (70.2% 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 top 20 agencies that received the largest number of requests in 2013–14 are shown in Table 9.2, with a comparison to the number of requests each received in 2012–13. The top five agencies in 2013–14 were DIBP, DHS, DVA, the Australian Taxation Office (ATO), and the Migration Review Tribunal (MRT). These agencies were also the top five in 2012–13, although DVA received the second-highest proportion of requests in 2012–13 but only the third-highest in 2013–14, switching places with DHS.

DIBP's request numbers increased by 2455 in 2013–14 (up 26.1%) and its proportion of the total number of requests received by Australian Government agencies increased from 37.7% in 2012–13 to 41.6% in 2013–14. This included a 24.7% increase in requests for personal information and a 51.8% increase in other requests.

DHS also received 805 more requests in 2013–14 (up 22.2%). However, DVA and the ATO both experienced decreases in the number of requests received (down 13.3% and 12.4% respectively, following decreases of 3.5% and 9.9% in 2012–13) 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 by 14.1% in 2013–14. Among the 20 agencies that received the most FOI requests in 2013–14 — 90.4% of all FOI requests in total — fewer agencies recorded decreases in requests than in 2012–13. For example, in that year, 11 of the top 20 agencies recorded decreases in requests. In 2013–14, only four agencies in the top 20 recorded decreases in requests. The decreases were also smaller than in 2012–13, when the largest decrease was 33.8% (the Attorney-General's Department (AGD)): in 2013–14, the largest decrease among the top 20 was 16.0% (the Trade Marks Office). On the other hand, the largest increase among the top 20 in 2013–14 was 93.9% (the Department of Finance (Finance)); in 2012–13, it was 98.9% (the Australian Postal Corporation).

The three agencies that received the most requests in 2013–14 — DIBP, DHS and DVA — experienced respectively increases of 26.1% and 22.2% and a decrease of 13.3% compared to 2012–13. Some other agencies in the top 20 experienced significant increases in the number of requests received: for example, Finance (the 93.9% increase mentioned above); the Department of Foreign Affairs and Trade (DFAT) (82.5%); the Refugee Review Tribunal (RRT) (73.9%); and the Department of the Prime Minister and Cabinet (PM&C) (72.7%). The only top 20 agencies that reported decreases in request numbers other than DVA were the Trade Marks Office (16.0%); the ATO (12.4%); and the Australian Securities and Investments Commission (ASIC) (5.6%).

Two 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 Australian Pesticides and Veterinary Medicines Authority (requests decreased by 52.6% in 2013–14) and ComSuper (62.4%).

Another agency in last year's top 20, the Department of Education, Employment and Workplace Relations (DEEWR), was abolished as part of machinery of government changes in September 2013. DEEWR received 74 requests from July 2013 until it ceased operating, while the Department of Employment (Employment) and the Department of Education (Education) — which were established in September 2013 to perform DEEWR's functions — together received 268 requests in 2013–14. The three agencies collectively received 4.0% more requests than DEEWR received in 2012–13. Employment also appeared in the 2013–14 top 20 in its own right, receiving 157 requests.

**Table 9.2** Agencies by numbers of FOI requests received

Agency	Rank 2012–13	Total 2012–13	% of all FOI requests	Rank 2013–14	Total 2013–14	% of all FOI requests	Change Total
Department of Immigration and Border Protection <sup>#</sup>	1	9399	37.7	1	11854	41.6	+2455
Department of Human Services	3	3632	14.6	2	4437	15.6	+805
Department of Veterans' Affairs	2	4245	17.0	3	3681	12.9	-564
Australian Taxation Office	4	877	3.5	4	768	2.7	-109
Migration Review Tribunal	5	554	2.2	5	715	2.5	+161
Refugee Review Tribunal	8	364	1.5	6	633	2.2	+269
Australian Federal Police	6	470	1.9	7	485	1.7	+15
Department of Defence	7	414	1.7	8	433	1.5	+19
Department of Health <sup>#</sup>	11	276	1.1	9	314	1.1	+38
Department of Foreign Affairs and Trade	17	154	0.6	10	281	1.0	+127
Trade Marks Office	9	332	1.3	11	279	1.0	-53
Attorney-General's Department	13	208	0.8	12	263	0.9	+55
Australian Securities and Investments Commission	12	251	1.0	13	237	0.8	-14
Department of Finance <sup>*</sup>	–	115	0.5	14	223	0.8	+108
Australian Customs and Border Protection Service	19	146	0.6	15	218	0.8	+72
Department of the Prime Minister and Cabinet <sup>*</sup>	–	121	0.5	16	209	0.7	+88

Agency	Rank 2012–13	Total 2012–13	% of all FOI requests	Rank 2013–14	Total 2013–14	% of all FOI requests	Change Total
Australian Postal Corporation	15	185	0.7	17	207	0.7	+22
Department of the Treasury	20	138	0.6	18	191	0.7	+53
Department of Employment**	–	–	–	19	157	0.6	–
Department of Industry#	16	164	0.7	20	144	0.5	–20
Total top 20	–	22,482^	90.1	–	25,729	90.4	+3247
Remaining agencies	–	2462	9.9	–	2734	9.6	+272
<b>Total</b>	–	<b>24,944</b>	<b>100.0</b>	–	<b>28,463</b>	<b>100.0</b>	<b>+3519</b>

\* Denotes an agency not listed in the top 20 agencies in 2012–13.

^ Shows the total for the top 20 agencies in 2012–13 (ie includes figures for three agencies not in the top 20 agencies in 2013–14).

# Denotes an agency whose name and/or functions changed in the Administrative Arrangements Order issued on 18 September 2013, or in one case, an agency that was established in that Order. DIBP was formerly the Department of Immigration and Citizenship; the Department of Health (Health) was formerly the Department of Health and Ageing; Finance was previously the Department of Finance and Deregulation; Employment was established to administer some of the functions formerly administered by DEEWR; and the Department of Industry (Industry) was formerly the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education.

## 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 (usually the applicant, though not necessarily). A request for ‘other’ information means a request for all other documents, such as documents concerning policy development and government decision making.

22,690 (or 79.7%) of all FOI requests in 2013–14 were for documents containing personal information. The percentage of such requests increased slightly from 79.5% in 2012–13, following a decrease from 80.7% in 2011–12 and 82.6% in 2010–11. Some of the decrease since 2010–11 can be attributed to system and process improvements in some larger agencies that have led to the release of personal information outside of the FOI Act.

The increase in the number of FOI requests for other (non-personal) information continued in 2013–14, with a 12.8% increase. This follows a 48.4% increase in 2010–11, a 16.5% increase in 2011–12 and a 7.1% increase in 2012–13. 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

four years, the combined increase in the number of FOI requests for non-personal information has been 108.9%.

Table 9.3 shows the type of requests that the top 20 agencies received in 2013–14 with a comparison to the number of requests each received in 2012–13.

**Table 9.3** Types of FOI requests received by agency

Agency	Personal 2012–13	Other 2012–13	Personal 2013–14	Other 2013–14
Department of Immigration and Border Protection	8911	488	11,113	741
Department of Human Services	3512	120	4298	139
Department of Veterans' Affairs	4115	130	3629	52
Australian Taxation Office	357	520	287	481
Migration Review Tribunal	553	1	708	7
Refugee Review Tribunal	343	21	624	9
Australian Federal Police	356	114	360	125
Department of Defence	232	182	212	221
Department of Health	4	272	6	308
Department of Foreign Affairs and Trade	68	86	115	166
Trade Marks Office	0	332	1	278
Attorney-General's Department	58	150	78	185
Australian Securities and Investments Commission	53	198	26	211
Department of Finance	17	98	13	210
Australian Customs and Border Protection Service	51	95	65	153
Department of the Prime Minister and Cabinet	1	120	7	202
Australian Postal Corporation	130	55	163	44
Department of the Treasury	8	130	6	185
Department of Employment	–	–	104	53
Department of Industry	88	76	34	110
Total top 20	19,204 <sup>^</sup>	3278 <sup>^</sup>	21,849	3880
Remaining agencies	623	1839	841	1893
<b>Total</b>	<b>19,827</b>	<b>5117</b>	<b>22,690</b>	<b>5773</b>

<sup>^</sup> Shows the total for the top 20 agencies in 2012–13 (ie includes figures for three agencies not in the top 20 agencies in 2013–14).

## FOI requests determined

In 2013–14, agencies and ministers processed FOI requests as follows (previous year figures are in round brackets):

- on hand at the beginning of the year: 2649 (2411)
- received during the year: 28,463 (24,944)
- requiring determination (ie on hand at the beginning of the year or received during the year): 31,112 (27,355)
- withdrawn: 3190 (2077)
- transferred: 944 (833)
- determined (ie access granted in full or in part, or refused): 23,106 (21,764)
- finalised (ie withdrawn, transferred or determined): 27,240 (24,674)
- on hand at the end of the year (ie requiring determination but not finalised): 3872 (2681).

Agencies and ministers determined 6.2% more requests, and finalised 10.4% more requests, in 2013–14 than in the previous reporting period.

The number of FOI requests on hand at the end of 2013–14 was 44.4% more than at the end of 2012–13. 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 increased by 13.3% in 2013–14. The number of requests transferred in 2013–14 (944) is the highest since 2010–11 (861). The large number of transfers may be the result of the increase in non-personal requests since the 2010 reforms. An applicant in such a request is more likely (than is an applicant for personal information) to address their request in the first instance to an agency other than 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 2013–14 increase in transfers may also be due in part to machinery of government changes implemented in the Administrative Arrangements Order issued on 18 September 2013. Where functions transfer from one agency to another, any FOI requests on hand that relate to that function are transferred to the agency receiving the new function. Additional transfers may also be necessary if applicants request documents from one agency that are moved into the possession of another. For example, DEEWR, which was abolished by the September 2013 Administrative Arrangements Order, reported transferring 46 requests in 2013–14, up from 31 in 2012–13. In addition, the agencies established to undertake DEEWR's functions (Employment and Education) reported making 9 and 8 transfers respectively in 2013–14. Taken together, this increase from the 2012–13 DEEWR figure represents 28.8% of the increase in transfers.

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 9.4 shows how FOI requests were determined in 2012–13 and 2013–14.

**Table 9.4** FOI requests determined

Decision	Total 2012–13	%	Total 2013–14	%
Granted in full	12,459	57.3	12,109	52.4
Granted in part	6995	32.1	7923	34.3
Refused	2310	10.6	3074	13.3
<b>Total</b>	<b>21,764</b>	<b>100.0</b>	<b>23,106</b>	<b>100.0</b>

Table 9.5 shows how FOI requests were determined in 2012–13 and 2013–14, broken into requests for personal and other (non-personal) information.

**Table 9.5** Breakdown of type of FOI requests determined

Decisions	Personal 2012–13	Other 2012–13	Personal 2013–14	Other 2013–14
Granted in full	11,366	1093	11,054	1055
Granted in part	5272	1723	6420	1503
Refused	1244	1066	1600	1474
<b>Total</b>	<b>17,882</b>	<b>3882</b>	<b>19,074</b>	<b>4032</b>

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.

In each of the last six 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, 57.3% in 2012–13 and 52.4% in 2013–14. This decrease applies to requests for both personal and for other information.

86.7% of requests were granted in full or in part in 2013–14 (down 2.7%). Apart from a small increase in 2012–13, this continues the general downward trend in the proportion of requests granted in full or in part over recent reporting years: 93.9% were granted in full or in part in 2008–09, 92.5% in 2009–10, 90.6% in 2010–11, 88.4% in 2011–12 and 89.4% in 2012–13.

Table 9.6 lists the top 20 agencies by the number of FOI decisions they made. Employment, Finance and Industry are included on the list of the top 20 agencies in terms of requests received, but not in the top 20 of decisions made. In contrast, the Civil Aviation Safety Authority (CASA), Comcare and the Department of the Environment feature in the top 20 by decisions made but not by requests received.

Table 9.6 shows significant differences in the outcome of FOI requests between those agencies processing the largest number of requests in 2013–14. In 2012–13, only three of the top 20 refused access to 30% or more of the FOI requests they received. In 2013–14, eight of the agencies in the top 20 refused 30% or more of the FOI requests they received: the Department of the Treasury (the Treasury) (85.3%), PM&C (67.6%), ASIC (62.0%), AGD (54.0%), CASA (39.1%), Health (37.9%) and the AFP (38.3%). The Treasury's refusal rate has increased from 2012–13, when it refused 48.6% of all requests. This increase occurred against a 79.2% increase in the number of requests determined.

Five of the top 20 agencies refused fewer than 10% of the FOI requests they received: the MRT refused 0.6%, DVA 1.2%, the Trade Marks Office 1.5%, the RRT 2.8% and DIBP 8.1%.

**Table 9.6** Top 20 agencies by numbers of FOI requests determined

Agency	Granted in full	%	Granted in part	%	Refused	%	Total
Department of Immigration and Border Protection	5895	52.7	4381	39.2	904	8.1	11,180
Department of Veterans' Affairs	3270	97.8	35	1.0	39	1.2	3344
Department of Human Services	858	36.7	1106	47.2	377	16.1	2341
Australian Taxation Office	90	13.2	444	64.9	150	21.9	684
Refugee Review Tribunal	458	84.2	71	13.1	15	2.8	544
Australian Federal Police	32	6.7	265	55.1	184	38.3	481
Migration Review Tribunal	254	71.5	99	27.9	2	0.6	355
Department of Defence	57	20.2	170	60.3	55	19.5	282
Trade Marks Office	126	48.6	129	49.8	4	1.5	259
Australian Securities and Investments Commission	39	18.8	40	19.2	129	62.0	208
Australian Postal Corporation	114	55.3	28	13.6	64	31.1	206
Department of Foreign Affairs and Trade	25	14.4	105	60.3	44	25.3	174
Department of Health	46	26.4	62	35.6	66	37.9	174
Attorney-General's Department	30	18.6	44	27.3	87	54.0	161
Australian Customs and Border Protection Service	32	20.4	86	54.8	39	24.8	157

Agency	Granted in full	%	Granted in part	%	Refused	%	Total
Department of the Treasury	3	2.3	16	12.4	110	85.3	129
Civil Aviation Safety Authority	43	39.1	24	21.8	43	39.1	110
Department of the Prime Minister and Cabinet	22	20.4	13	12.0	73	67.6	108
Department of the Environment	33	32.4	47	46.1	22	21.6	102
Comcare	25	27.2	40	43.5	27	29.3	92
Top 20	11,452	54.3	7205	34.2	2434	11.5	21,091
Remaining Agencies	657	32.6	718	35.6	640	31.8	2015
<b>Total</b>	<b>12,109</b>	<b>52.4</b>	<b>7923</b>	<b>34.3</b>	<b>3074</b>	<b>13.3</b>	<b>23,106</b>

## Use of exemptions

Table 9.7 shows how Australian Government agencies and ministers claimed exemptions under the FOI Act when processing FOI requests in 2013–14. More than one exemption might be applied in processing an FOI request.

**Table 9.7** Use of exemptions in FOI decisions

FOI Act reference	Exemption	Personal	Other	Total	%
s 33	Documents affecting national security, defence or international relations	254	202	456	2.0
s 34	Cabinet documents	1	60	61	0.3
s 37	Documents affecting enforcement of law and protection of public safety	1291	194	1485	6.4
s 38	Documents to which secrecy provisions of enactments apply	355	190	545	2.4
s 42	Documents subject to legal professional privilege	173	115	288	1.2
s 45	Documents containing material obtained in confidence	148	95	243	1.1
s 45A	Parliamentary Budget Office documents	0	1	1	0.0
s 46	Documents disclosure of which would be contempt of Parliament or contempt of court	7	13	20	0.1



FOI Act reference	Exemption	Personal	Other	Total	%
s 47	Documents disclosing trade secrets or commercially valuable information	19	107	126	0.5
s 47A	Electoral rolls and related documents	7	3	10	0.0
s 47B	Commonwealth-State relations	67	66	133	0.6
s 47C	Deliberative processes	201	286	487	2.1
s 47D	Financial or property interests of the Commonwealth	3	16	19	0.1
s 47E	Certain operations of agencies	1223	498	1721	7.4
s 47F	Personal privacy	3974	785	4759	20.6
s 47G	Business	152	274	426	1.8
s 47H	Research	0	1	1	0.0
s 47J	The economy	0	2	2	0.0

In 11,255 requests (48.7%), no exemption was claimed by the agency or minister. This is a higher proportion of requests than in 2012–13 (44.7%). The continued decrease in the number of requests granted in 2013–14 means that agencies are generally relying less on exemptions at the same time as they refuse access to a higher proportion of requests. This suggests in turn that agencies are relying increasingly more on other provisions in the FOI Act to refuse access — such as s 24A, which allows agencies to refuse access where the requested documents cannot be found or do not exist, or s 24 where a practical refusal reason exists, discussed in the next section.

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 same proportion as in 2012–13). The next most-claimed exemptions were s 47E (certain operations of agencies — 7.4%, up from 4.1% in 2012–13), s 37 (documents affecting enforcement of law and protection of public safety — 6.4%), and s 38 (documents to which secrecy provisions of enactments apply — 2.4%).

## Use of practical refusal

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 the agency 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 9.8 provides information about how Australian Government agencies and ministers engaged in request consultation processes under s 24AB of the FOI Act in 2013–14 and the outcome of those processes.

**Table 9.8** Use of practical refusal

Practical refusal processing step	Personal	Other	Total	%
Notified in writing of intention to refuse request	1043	714	1757	–
Request was subsequently refused or withdrawn	647	532	1179	67.1
Request was subsequently processed	396	182	578	32.9

Agencies sent over twice as many (124.7% more) notices of an intention to refuse a request in 2013–14 than in 2012–13, following on from an increase of 149.0% in 2012–13. In 2013–14, 67.1% of those requests were subsequently refused or withdrawn: the proportion was 81.5% in 2011–12 and 42.7% in 2012–13. This indicates that the request consultation process did not work well in an increasing number of cases, whether because agencies were not giving applicants sufficient information to refine the scope of their requests or because applicants were not willing to refine their request so that it could be processed.

Most of the increase in practical refusal processing in 2013–14 can be attributed to two agencies: DHS and DIBP. In the previous reporting period, DHS and DIBP issued 35 and 202 notices of an intention to refuse a request, respectively; those figures rose to 706 and 400 in 2013–14, an increase of 1917.1% for DHS and 98.0% for DIBP. Together they issued 62.9% of all notices in 2013–14; and 30.3% of all notices in 2012–13. DHS showed the sharpest proportional increase, issuing 40.2% of all notices in 2013–14, compared to 4.5% in 2012–13. DIBP also advised the OAIC that it was unable to provide full statistics about its use of the practical refusal mechanism in 2013–14, meaning that DIBP may have sent more notices than it reported.

In 2013–14, agencies sent more notices of an intention to refuse a request for personal information. These notices comprised 59.4% of the total number of notices, compared to 40.4% in 2012–13. Again, much of the increase can be attributed to DHS and DIBP, which together issued 88.4% of all notices that were issued for personal information requests (with DHS issuing 64.4%).

There was also a decrease in the number of personal information requests that were subsequently processed following the request consultation process. In 2012–13, 59.5% of personal requests were processed following the request consultation process. This number fell to 38.0% in 2013–14. There was a similar fall in the number of other requests that were subsequently processed: from 55.8% in 2012–13 to 25.5% in 2013–14.

## 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 an 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 9.9 shows the response times for all agencies and ministers for 2012–13 and 2013–14.

Table 9.10 shows response times separately for personal and other requests in 2012–13 and 2013–14. In 2013–14, 95.8% of all FOI requests determined were processed within the applicable statutory time period: 96.9% of all personal information requests and 90.4% of non-personal requests. This is an improvement in response time from 2011–12 (88.5%) and 2012–13 (85.6%). While this improvement is welcome, it should be considered alongside the increase in the numbers of access refusal decisions in 2013–14 compared to previous years (see above).

**Table 9.9** Response times — FOI requests

Response time	Total 2012–13	%	Total 2013–14	%
Within applicable statutory time period	18,622	85.6	22,132	95.8
Up to 30 days over applicable statutory time period	2107	9.7	557	2.4
31–60 days over applicable statutory time period	457	2.1	234	1.0
61–90 days over applicable statutory time period	230	1.1	98	0.4
More than 90 days over applicable statutory time period	348	1.6	85	0.4
<b>Total</b>	<b>21,764</b>	<b>100.0</b>	<b>23,106</b>	<b>100.0</b>

**Table 9.10** Response times broken down by personal and other

Response time	Personal 2012–13	Other 2012–13	Personal 2013–14	Other 2013–14
Within applicable statutory time period	15,441	3181	18,488	3644
Up to 30 days over applicable statutory time period	1807	300	348	209
31–60 days over applicable statutory time period	293	164	128	106
61–90 days over applicable statutory time period	139	91	65	33
More than 90 days over applicable statutory time period	202	146	45	40
<b>Total</b>	<b>17,882</b>	<b>3882</b>	<b>19,074</b>	<b>4032</b>

Table 9.11 shows those agencies and ministers that, in 2013–14, had one or more FOI requests that took more than 90 days to finalise beyond the applicable statutory time period.

Three agencies took longer than 90 days after the applicable statutory period had expired to process more than 5% of their FOI requests (down from eight agencies in 2012–13). The AFP and DIBP both received and determined more requests in 2013–14 than in 2012–13, but experienced significant decreases in the number of requests taking more than 90 days to process (a decrease of 40.4% and 91.1% respectively).

**Table 9.11** Response times greater than 90 days after the expiry of the applicable statutory period 2013–14

Agency	Total requests determined	Requests determined more than 90 days after statutory period	% of total
Australian Federal Police	481	40	8.3
Department of Immigration and Border Protection	11,180	19	0.2
Australian Customs and Border Protection Service	157	10	6.4
Australian Taxation Office	684	4	0.6
Civil Aviation Safety Authority	110	3	2.7
Department of the Prime Minister and Cabinet	108	3	2.8
Department of Industry	82	2	2.4
Attorney-General's Department	161	1	0.6
Office of the Commonwealth Director of Public Prosecutions	51	1	2.0
Australian Broadcasting Corporation	25	1	4.0
National Disability Insurance Agency	8	1	12.5

## 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 2013–14, 2891 amendment applications were received by agencies (none were received by ministers). This is a 1.3% increase from 2012–13, following decreases of 26.4% in 2009–10, 20.0% in 2010–11, 5.0% in 2011–12, and 18.9% in 2012–13. Only eight agencies received applications for amendment in 2013–14. One agency, DIBP, received 2860 amendment applications (98.9% of the total).

3303 amendment applications were determined in 2013–14. This is 410 more than in 2012–13 (up 14.2%). Table 9.12 compares the decision making for amendment applications for the last four reporting periods. In 2013–14, a decision to amend or annotate a person's personal record was made in 68.1% of the determined applications, a smaller proportion than in 2010–11 (77.4%), 2011–12 (73.0%) and 2012–13 (72.9%).

**Table 9.12** Determination of amendment applications

Decision	2010–11	%	2011–12	%	2012–13	%	2013–14	%
Requests granted: amend record	2367	64.1	1884	52.9	1873	64.7	2040	61.8
Requests granted: annotate record	487	13.2	717	20.1	236	8.2	208	6.3
Requests granted: amend and annotate record	2	0.1	2	0.0	1	0.0	0	0.0
Requests refused	836	22.6	961	27.0	783	27.1	1055	31.9
<b>Total decided</b>	<b>3692</b>	<b>100</b>	<b>3564</b>	<b>100</b>	<b>2893</b>	<b>100</b>	<b>3303</b>	<b>100</b>

### 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 2013–14, 87.5% of amendment applications were decided within the statutory time period. This is a decrease from 2012–13 (96.7%). All of the 19 applications not processed within the statutory time period were applications filed with DIBP. This is an improvement from 2012–13, when DIBP did not process 93 applications within the statutory time period.

## Charges

Under the *Freedom of Information (Charges) Regulations 1982* (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 of the FOI Act.

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 9.13 shows the amounts collected by the 20 agencies that collected the most in charges under the FOI Act in 2013–14. These top 20 agencies collected 85.0% of all charges collected by Australian Government agencies and ministers under the FOI Act during that period.

**Table 9.13** Top 20 agencies by charges collected

Agency	Requests received	Requests where charges notified	Total charges notified	Total charges collected
Department of Health	314	124	\$96,177	\$53,199
Department of Agriculture	79	41	\$33,210	\$19,827
Trade Marks Office	279	159	\$30,327	\$13,516
Civil Aviation Safety Authority	122	3372	\$18,402	\$12,995
Department of Finance	223	134	\$54,399	\$10,103
Australian Pesticides and Veterinary Medicines Authority	73	72	\$11,480	\$9,496
Department of Infrastructure and Regional Development	106	43	\$45,035	\$9,138
Department of Foreign Affairs and Trade	281	62	\$32,810	\$8,323
Australian Taxation Office	768	50	\$16,816	\$8,163
Department of the Environment	128	25	\$20,051	\$7,991
Department of Defence	433	110	\$46,065	\$7,701
Department of Immigration and Border Protection	11854	107	\$29,888	\$7,160
Department of Veterans' Affairs	3681	84	\$6,445	\$5,910
Great Barrier Reef Marine Park Authority	16	14	\$13,165	\$5,730

Agency	Requests received	Requests where charges notified	Total charges notified	Total charges collected
Australian Transport Safety Bureau	26	11	\$5,313	\$5,212
Department of the Treasury	191	40	\$12,990	\$5,019
Department of Human Services	4437	66	\$15,833	\$4,244
Office of the Fair Work Building Industry Inspectorate	2	1	\$3,750	\$3,750
Department of Employment	157	30	\$8,412	\$3,182
Clean Energy Regulator	15	6	\$6,212	\$3,004
Top 20	23,185	4551	\$506,780	\$203,663
Remaining agencies	5278	406	\$227,982	\$35,965
<b>Total</b>	<b>28,463</b>	<b>4957</b>	<b>\$734,762</b>	<b>\$239,628</b>

In 2013–14, agencies notified a total of \$734,762 in charges, with respect to 4957 requests, but collected only \$239,628 (32.6%) 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 slightly more in charges in 2013–14 than in the previous year. In 2012–13, agencies notified a total of \$703,755 in charges, with respect to 1296 requests, and collected \$236,754. The percentage increase in the notification and collection amounts for 2013–14 were 4.4% and 1.2%, respectively.

Charges collected, as a proportion of the total cost of administering the FOI Act, remained stable compared to 2012–13. In 2013–14, charges collected represented 0.6% of the total cost of administering the Act. In 2009–10, 1.9%; in 2010–11,<sup>2</sup> 1.7%; in 2011–12, 1.0%; and in 2012–13, 0.5%. (See below for details of the cost of administering the FOI Act.)

## Disclosure log

As explained in Chapter Eight, all Australian Government agencies and ministers that are subject to the FOI Act are required to maintain an FOI disclosure log on their website. The disclosure log lists information that has been released to FOI applicants, subject to some exceptions (such as personal information).

<sup>2</sup> 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.



Information was collected for the second time in 2013–14 from agencies and ministers on disclosure log activity. A total of 109 agencies and ministers provided information (down from 118 in 2012–13). Collectively, they reported 1197 documents listed on disclosure logs; this included 823 documents that could be downloaded from the agency’s or minister’s website, 23 documents from another website, and in 351 instances the agency or minister made the documents available by another means (usually upon request).

In total, 8.6% fewer entries were published on disclosure logs in 2013–14 than in 2012–13. The 2.7% fall in full or partial access grant decisions in 2013–14 would have been one reason for this decrease. Nonetheless, agencies and ministers published a proportionally smaller amount of disclosure log entries compared to full or partial access grant decisions made: a disclosure log entry was published following 6.0% of full or partial access decisions, down from 6.7% in 2012–13.

Agencies and ministers also reported a total of 75,705 unique visits to disclosure log and 397,349 page views, respective decreases of 22.0% and 55.8% compared to 2012–13. This may in part reflect that only 58 agencies and ministers provided data about visits and/or page views in 2013–14, down from 75 in 2012–13.

### OAIC disclosure log

During 2013–14, four 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.

## 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.

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 2013–14, 596 applications were made for internal review of FOI decisions: 16.6% more than in 2012–13. Of the 596 applications for internal review, 312 (52.3%) were for review of decisions on requests for personal information and 284 (47.7%) were for review of decisions on other (non-personal) requests.

Agencies finalised 542 decisions on internal review in 2013–14: 11.8% more than were made in 2012–13. Of these, 297 (54.8%) affirmed the original decision, 49 (9.0%) set aside the original decision and granted access in full, 138 (25.5%) granted access in part, five granted access after deferment (0.9%), six (1.1%) granted access in another form, ten (1.8%) resulted in lesser access and applicants withdrew 26 applications (4.8%) without concession by the agency. Agencies reduced the charges levied as a result of internal review in 11 cases (2.0%).

There were 56 applications for internal review of decisions on amendment applications, 20 (26.3%) fewer than in 2012–13. Agencies made 78 of these internal review decisions: in 58 cases (74.4%) the original decision was affirmed; in 20 cases, it was set aside.

## Information Commissioner review

Table 9.14 provides a breakdown by agency and minister of IC review applications received in 2013–14, where the agency or minister was the subject of more than one IC review. In total, there were 524 applications for IC review (up 3.4%).

**Table 9.14** Information Commissioner review where the agency/minister was the subject of more than one IC review

Agency/minister	Access refusal decisions	Access grant decisions	Invalid or no jurisdiction	Total
Department of Human Services	92	0	3	95
Department of Immigration and Border Protection	72	0	4	76
Australian Securities and Investments Commission	41	0	1	42
Australian Federal Police	28	1	2	31
Australian Taxation Office	29	0	1	30
Department of Defence	19	1	0	20
Department of Veterans' Affairs	16	0	0	16
Attorney-General's Department	13	0	0	13
Department of the Treasury	13	0	0	13
Commonwealth Ombudsman	10	0	0	10
Australian Postal Corporation	9	0	1	10
Department of Foreign Affairs and Trade	8	0	0	8
Department of Health	7	0	1	8
Australian Customs and Border Protection Service	7	0	0	7
Department of Education	7	0	0	7
Attorney-General	7	0	0	7
Department of the Prime Minister and Cabinet	7	0	0	7
Civil Aviation Safety Authority	6	1	0	7
Department of the Environment	6		0	6
Department of Social Services	5	1	0	6
Australian Electoral Commission	4	2	0	6
Tax Practitioners Board	4	0	0	4
Australian Health Practitioner Regulation Agency	0	0	4	4
Department of Infrastructure and Regional Development	3	1	0	4
Australian Broadcasting Corporation	3	0	0	3

Agency/minister	Access refusal decisions	Access grant decisions	Invalid or no jurisdiction	Total
Australian Prudential Regulation Authority	3	0	0	3
Australian Skills Quality Authority	3	0	0	3
Department of Agriculture	2	1	0	3
The Australian National University	2	0	0	2
Australian Trade Commission	2	0	0	2
Comcare	2	0	0	2
Commonwealth Scientific and Industrial Research Organisation	2	0	0	2
Department of Employment	2	0	0	2
Department of Industry	2	0	0	2
Family Court of Australia	2	0	0	2
Infrastructure Australia	2	0	0	2
Minister for Foreign Affairs	2	0	0	2
Minister for Infrastructure and Transport	2	0	0	2
National Gallery of Australia	2	0	0	2
Private Health Insurance Ombudsman	2	0	0	2
Special Broadcasting Service Corporation	2	0	0	2
Department of Finance	0	2	0	2
Airservices Australia	1	1	0	2
Australian Human Rights Commission	1	1	0	2
<b>Subtotal</b>	<b>452</b>	<b>12</b>	<b>17</b>	<b>481</b>
Remaining agencies/ministers	36	2	5	43
<b>Total</b>	<b>488</b>	<b>14</b>	<b>22</b>	<b>524</b>

Generally speaking, the agencies about which the most IC review applications were made were those that received the largest number of FOI requests in 2013–14. Twenty or more IC review applications were made about each of four agencies: DHS, DIBP, ASIC, the AFP and the ATO. Each of those agencies is in the top 20 agencies in terms of FOI requests received.

There are only three agencies in the top 20 agencies by FOI requests received about which no IC review applications were received in 2013–14: the MRT, the RRT and the Trade Marks Office.

Agencies that did not receive large numbers of applications, but about which the OAIC received a comparatively large number of IC review applications in 2013–14, include the Private Health Insurance Ombudsman (1 request, 2 IC reviews), the Minister for Infrastructure and Transport (2 requests, 2 IC reviews), the Special Broadcasting Service Corporation (4 requests, 2 IC reviews), the Tax Practitioners Board (17 requests, 4 IC reviews), Infrastructure Australia (13 requests, 2 IC reviews), the Australian Electoral Commission (43 requests, 6 IC reviews), the Commonwealth Ombudsman (72 requests, 10 IC reviews), the Commonwealth Science and Industrial Research Organisation (14 requests, 2 IC reviews) and the National Gallery of Australia (14 requests, 2 IC reviews).

Information about the Information Commissioner’s handling of IC reviews is given in Chapter Eight.

### 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.<sup>3</sup> 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.<sup>4</sup>

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.

Chart 9.1 shows the number of applications for review of FOI decisions received by the AAT since 1983–84, based on data provided in previous OAIC annual reports and earlier FOI annual reports.

Chart 9.1 shows that 35 FOI decisions were appealed to the AAT in 2013–14. This is less than the 42 decisions appealed in 2012–13, but still substantially more than the 20 decisions appealed in 2011–12. 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.

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<sup>3</sup> *Administrative Appeals Tribunal Act 1975*, s 27.

<sup>4</sup> From 1 July 2014 the fee is \$861.

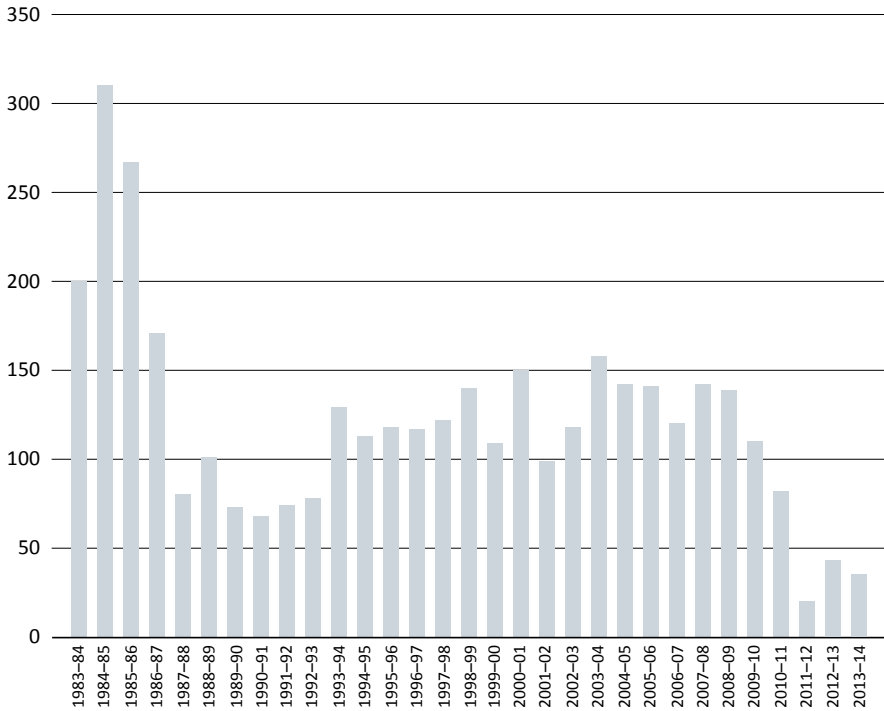
**Chart 9.1** Applications for review of FOI decisions received by the AAT since 1983–84

Table 9.15 provides a breakdown by agency of applications to the AAT in FOI matters in 2013–14. This data has been provided by the AAT.

**Table 9.15** AAT review by agency

Agency	Applications	% of total applications
Australian Accounting Standards Board	1	2.9
Australian Broadcasting Corporation	1	2.9
Australian Electoral Commission	1	2.9
Australian Federal Police	2	5.7
Australian Securities and Investments Commission	1	2.9
Australian War Memorial	1	2.9
Bureau of Meteorology	1	2.9
Commonwealth Scientific and Industrial Research Organisation	1	2.9
Australian Customs and Border Protection Service	1	2.9
Department of Human Services	11	31.4
Department of Immigration and Border Protection	5	14.3

Agency	Applications	% of total applications
Department of Social Services	2	5.7
Department of Veterans' Affairs	1	2.9
Office of the Australian Information Commissioner	2	5.7
Repatriation Medical Authority	1	2.9
Takeovers Panel	1	2.9
The Treasury	1	2.9
Out of jurisdiction	1	2.9
<b>Total</b>	<b>35</b>	<b>100.0</b>

Table 9.16 shows the outcome of the 35 FOI appeals finalised by the AAT in 2013–14. This data has been provided by the AAT.

**Table 9.16** Outcomes of FOI appeals finalised by the AAT in 2013–14

AAT Outcomes	Number
Affirmed by consent/withdrawn	0
Set aside by consent/withdrawn	5
Varied by consent/withdrawn	0
Dismissed by consent/withdrawn	2
Withdrawn by consent/withdrawn	10
Affirmed by decision	2
Set aside by decision	5
Varied by decision	0
Dismissed by AAT	11
No application fee paid	0
Extension of time refused	0

Of the 35 FOI appeals finalised by the AAT, seven (20%) resulted in a decision. The AAT affirmed the agency's decision in two (28.6%) of those reviews, compared with 33.3% in 2012–13.

Three of the FOI appeals decided by the AAT in 2013–14 were appeals from IC review decisions. On 31 July 2013, in *Lee and Minister for Immigration and Citizenship* [2013] AATA 532, the AAT affirmed the FOI Commissioner's decision in 'O' and *Department of Immigration and Citizenship* [2012] AICmr 27. On 16 August 2013, in *Pangilinan and Secretary, Department of Immigration and Citizenship* [2013] AATA 574,

the AAT varied the Privacy Commissioner's decision in *'R' and Department of Immigration and Citizenship* [2012] AICmr 32 to reflect DIBP's release at the hearing of documents over which the Department had previously claimed exemptions. On 20 December 2013, in *Nikjoo and Minister for Immigration and Border Protection* [2013] AATA 921, the AAT varied the Privacy Commissioner's decision in *'B' and Department of Immigration and Citizenship* [2013] AICmr 9 to refuse access to some of the requested documents under s 45 (material obtained in confidence) by instead refusing access on the ground that the documents in question were irrelevant to the applicant's request (s 22).

### Federal Circuit Court of Australia appeals

On 5 February 2014, in *Pangilinan and Secretary of the Department of Immigration* [2014] FCCA 294, the Federal Circuit Court of Australia dismissed an appeal from the AAT's decision in *Pangilinan and Secretary, Department of Immigration and Citizenship* [2013] AATA 574 (discussed above).

### High Court of Australia appeals

On 6 December 2013, in *Kline v Official Secretary to the Governor-General* [2013] HCA 52, the High Court of Australia dismissed an appeal from the Full Court of the Federal Court's decision in *Kline and Official Secretary to the Governor-General* [2012] FCAFC 184, which had affirmed the AAT's decision in *Kline and Official Secretary to the Governor-General* [2012] AATA 247, which in turn had affirmed the FOI Commissioner's decision in *'B' and 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 Eight.

### 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 2013–14, the Commonwealth Ombudsman received 45 complaints about FOI matters, 9.8% more than the 41 it received in the previous year.<sup>5</sup> The Commonwealth Ombudsman transferred four complaints to the OAIC under s 6C of the Ombudsman Act 1976 during 2013–14. The Ombudsman did not investigate any FOI complaints in 2013–14.

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5 The OAIC's 2012–13 annual report incorrectly stated that the Ombudsman received 55 complaints in that reporting period.



## 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 third 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 2013–14 was \$41.837 million, a decrease of 7.5% on the previous year's total of \$45.231 million. This decrease occurred despite an increase of 6.2% in requests determined, and an increase of 10.4% in requests finalised, over the same period. Total yearly FOI costs since the commencement of the FOI Act are shown in Table 9.17.<sup>6</sup>

**Table 9.17** 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	2013–14	\$41,836,685
1992–93	\$12,702,329	2003–04	\$20,189,136		

\* Seven months only.

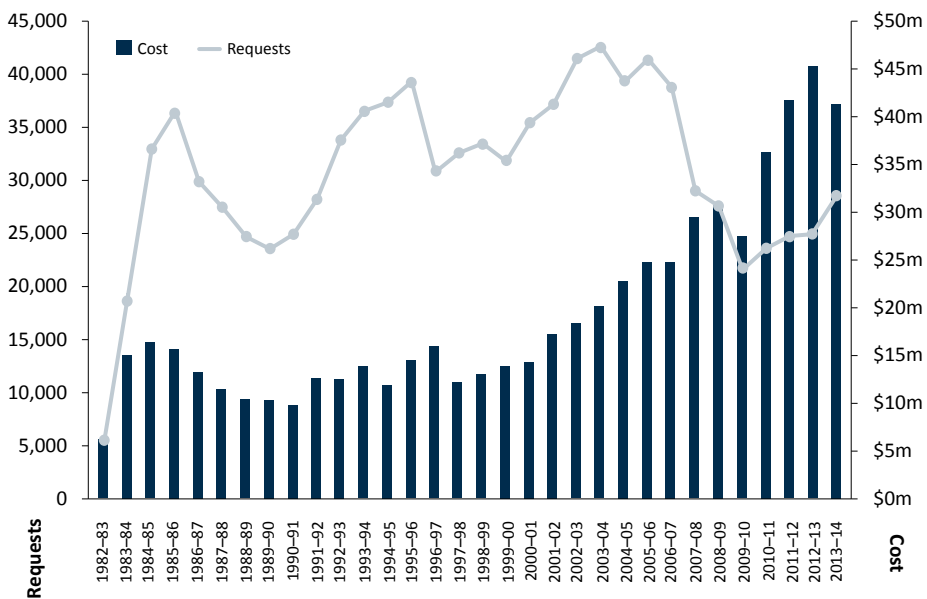
Table 9.18 sets out the average cost per FOI request determined (granted in full, in part or refused) for the last 10 years. The average cost per request determined in 2013–14 was \$1811 (down 12.8%).

<sup>6</sup> 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 9.18** Average cost per request for last 10 years

Year	Requests determined	Total cost	Average cost per request determined
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
2013–14	23,106	\$41,836,685	\$1811

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 2014, Australian Government agencies and ministers have received 984,810 FOI requests. It is likely that the one millionth such request will be received during 2014–15.

**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, 2012–13 and 2013–14 are shown in Table 9.19.

**Table 9.19** Total FOI staffing for years 2010–11 to 2013–14

Staffing	2010–11	2011–12	2012–13	2013–14
Staff numbers: 75–100% time spent on FOI matters	213*	249	284	287
Staff numbers: less than 75% time spent on FOI matters	2431*	3722	3546	3623
Total staff hours	511,986	576,824	638,466	630,936
<b>Total staff years</b>	<b>256.0</b>	<b>288.4</b>	<b>319.2</b>	<b>315.5</b>

\* 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 9.20, based on information provided by agencies and the following median base annual salaries:<sup>7</sup>

- FOI contact officer (officers whose duties included FOI work) \$ 74,331<sup>8</sup>
- other officers involved in processing requests
  - Senior Executive Service (SES) officers (or equivalent) \$178,330<sup>9</sup>
  - APS Level 6 and Executive Levels (EL) 1–2 \$108,013<sup>10</sup>
  - Australian Public Service (APS) Levels 1–5 \$ 61,512<sup>11</sup>

<sup>7</sup> 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 2013. These median levels are as at 31 December 2013.

<sup>8</sup> APS Level 5 base salary median.

<sup>9</sup> SES Band 1 base salary median.

<sup>10</sup> Executive Level 1 base salary median.

<sup>11</sup> APS Level 3 base salary median.

- Minister's office
  - Minister and advisers \$133,777<sup>12</sup>
  - Minister's support staff \$ 61,512<sup>13</sup>

**Table 9.20** Estimated staff costs of FOI for 2013–14

Type of staff	Staff years	Salary costs	Related costs (60%)	Total staff costs
FOI contact officers	240.3	\$17,864,787	\$10,718,872	\$28,583,659
SES	6.6	\$1,178,226	\$706,936	\$1,885,162
APS Level 6 and EL 1–2	35.4	\$3,823,012	\$2,293,807	\$6,116,819
APS Levels 1–5	32.2	\$1,980,471	\$1,188,283	\$3,168,754
Minister and advisers	0.7	\$96,788	\$58,073	\$154,860
Minister's support staff	0.2	\$12,761	\$7,603	\$20,274
<b>Total</b>	<b>315.5</b>	<b>\$24,955,956</b>	<b>\$14,973,573</b>	<b>\$39,929,529</b>

Total estimated staff costs in 2013–14 were \$39.930 million, 0.5% more than in the previous year. By contrast, in 2012–13, total estimated staff costs rose by 17.3%.

### Non-labour costs

Non-labour costs directly attributable to FOI are summarised in Table 9.21 including the percentage change between 2012–13 and 2013–14. The total in 2013–14 was \$1.907 million, 65.4% less than in the previous year.

As in 2012–13, the largest decrease in 2013–14 was in legal costs, which may indicate that agencies are increasingly undertaking legal work in-house. Training costs decreased by 55.5% in 2013–14 (following a 23.8% decrease in 2012–13). This was presumably due to a continuing reduction in the need to train staff on the effect of the 2010 reforms.

**Table 9.21** Identified non-labour costs of FOI

Costs	2010–11	2011–12	2012–13	2013–14	% change
General legal advice costs	n/a	\$5,323,951	\$3,116,080	\$830,002	-73.4%
Litigation costs	n/a	\$1,229,393	\$727,879	\$157,781	-78.3%
Total legal costs	\$4,991,656	\$6,553,344	\$3,843,959	\$987,783	-74.3%
General administrative costs	\$700,565	\$600,310	\$1,100,960	\$706,032	-35.9%
Training	\$388,207	\$398,373	\$303,437	\$134,989	-55.5%
Other	\$282,897	\$312,270	\$266,893	\$78,352	-70.6%
<b>Total</b>	<b>\$6,363,324</b>	<b>\$7,864,297</b>	<b>\$5,515,249</b>	<b>\$1,907,156</b>	<b>-65.4%</b>

<sup>12</sup> Executive Level 2 base salary median.

<sup>13</sup> APS Level 3 salary median.

## Average cost per FOI request

The average staff-days per request ranged across agencies from 0.04 to 52.1 days in 2013–14. The overall average was 2.9 days. The average was 2.9 days in 2010–11, 3.1 days in 2011–12 and 3.4 days in 2012–13. The average cost per request ranged across agencies from \$20 to \$31,837. The overall average was \$1470, a decrease of 19.0% on the previous year's average of \$1814.

Table 9.22 lists the agencies/ministers that recorded an average cost of less than \$200 per request received in 2013–14.

**Table 9.22** Agencies/ministers with average cost per request less than \$200

Agency	Requests received	Average cost per request
Commonwealth Superannuation Corporation	3	\$20
Federal Circuit Court of Australia	3	\$20
Minister for Trade and Investment	2	\$25
Minister for Foreign Affairs	1	\$49
Minister for Resources and Energy	2	\$54
Migration Review Tribunal	715	\$58
Albury-Wodonga Corporation	1	\$59
Australian Reinsurance Pool Corporation	1	\$59
Designs Office	1	\$59
Minister for Industry	4	\$62
Minister for Veterans' Affairs	2	\$78
Refugee Review Tribunal	633	\$79
Safety, Rehabilitation and Compensation Commission	1	\$86
Private Health Insurance Administration Council	2	\$119
Defence Force Remuneration Tribunal	1	\$146
Australian Military Forces Relief Trust Fund	2	\$149
Minister for Infrastructure and Transport	2	\$149
Assistant Treasurer	2	\$161
Superannuation Complaints Tribunal	14	\$179
Remuneration Tribunal	1	\$195

Table 9.23 lists the agencies that recorded an average cost of more than \$10,000 per request received in 2013–14.

**Table 9.23** Agencies with average cost per request greater than \$10,000

Agency	Requests received	Average cost per request
Office of the Fair Work Building Industry Inspectorate	2	\$31,837
Commonwealth Scientific and Industrial Research Organisation	14	\$22,919
Food Standards Australia New Zealand	6	\$16,907
Australian Agency for International Development	3	\$15,430
Special Broadcasting Service Corporation	4	\$14,428
Bureau of Meteorology	14	\$13,634
Future Fund Management Agency	3	\$13,285
Grains Research and Development Corporation	2	\$12,677
Australian Curriculum, Assessment and Reporting Authority	9	\$12,191
Export Finance and Insurance Corporation	2	\$11,269
Clean Energy Finance Corporation	2	\$10,797

The highest average in Table 9.23 increased by 14.4% from 2012–13, when the highest average cost per request was \$27,833. There has also been a notable decrease in the volume of requests received by agencies that recorded an average cost of more than \$10,000 per request received: in 2012–13 this table included three portfolio departments, which received 27, 44 and 121 requests respectively. Two of these departments reduced their average cost per request to below \$10,000 in 2013–14, while the other was abolished in September 2013.

## Impact of the Information Publication Scheme on agency resources

Agencies are required to provide information about the costs of meeting their obligations under the IPS, which commenced on 1 May 2011. Further information about the IPS is given in Chapter Eight.

The total reported cost attributable to compliance with the IPS in 2013–14 was \$1.705 million, 45.1% less than in 2012–13 (\$3.108 million). This decrease, which followed a 22.2% decrease in 2012–13, may indicate the IPS compliance has shifted to a business-as-usual model following establishment costs in 2011–12. 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 9.24 shows the total reported IPS staffing across Australian Government agencies in 2011–12, 2012–13 and 2013–14 and the percentage change between 2012–13 and 2013–14.

**Table 9.24** Total IPS staffing

Staffing	2011–12	2012–13	2013–14	% change
Staff numbers: 75–100% time on IPS matters	21	20	17	–15%
Staff numbers: less than 75% time on IPS matters	691	529	415	–21.6%
Total staff hours	54,101	46,959	26,116	–44.4%
<b>Total staff years</b>	<b>27.1</b>	<b>23.5</b>	<b>13.1</b>	<b>–44.3%</b>

Table 9.25 details the estimated staff costs of IPS for 2013–14, for:

- IPS contact officers (officers whose duties included IPS work)
- Other officers involved in IPS work, including:
  - SES
  - APS level 6 and Executive Levels (EL) 1–2
  - APS Levels 1–5.

**Table 9.25** Estimated staff costs of IPS for 2013–14

Type of staff	Staff years	Salary costs	Related costs (60%)	Total staff costs
IPS contact officers	8.1	\$605,129	\$363,077	\$968,206
SES	0.3	\$61,613	\$36,968	\$98,581
APS Level 6 and EL 1–2	2.4	\$263,174	\$157,904	\$421,078
APS Levels 1–5	2.1	\$131,328	\$78,797	\$210,125
<b>Total</b>	<b>13.1</b>	<b>\$1,061,243</b>	<b>\$636,746</b>	<b>\$1,697,990</b>

## Non-labour costs

Table 9.26 details the identified non-labour costs of the IPS in 2011–12, 2012–13 and 2013–14 and the percentage change between 2012–13 and 2013–14.

**Table 9.26** Identified non-labour costs of IPS

Item	2011–12	2012–13	2013–14	% change
General administrative costs	\$17,808	\$24,383	\$3768	-84.5%
General legal advice costs	\$24,603	\$31,502	\$319	-99.0%
Training	\$6068	\$500	\$0	-100%
Other	\$170,516	\$57,300	\$2878	-95.0%
<b>Total</b>	<b>\$218,995</b>	<b>\$113,685</b>	<b>\$6965</b>	<b>-93.9%</b>

After increasing in 2012–13, IPS general administrative costs and legal advice costs fell substantially in 2013–14. Agencies also reported a fall in ‘Other’ IPS costs and no expenditure on IPS training, continuing the decreases from 2012–13. As noted above, these figures suggest agencies, after meeting the initial costs of establishing the IPS, shifted into a business-as-usual model, incurring fewer costs.

## 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 \$13.634 million (see Appendix One). Accordingly, the OAIC estimates that it spent approximately \$4.772 million on the exercise of its FOI functions in 2013–14 (down 5.1%).

The OAIC spent \$42,689 on processing FOI requests made to the OAIC in 2013–14 (down 9.4%).





# Appendices

## Appendix One — Agency resource statement and resources for outcomes

**Table A1.1** OAIC Resource Statement 2013–14

		Actual available appropriation for 2013–14 \$'000	Payments made 2013–14 \$'000	Balance remaining 2013–14 \$'000
		(a)	(b)	(a) — (b)
Ordinary Annual Services <sup>1</sup>				
Departmental appropriation <sup>2</sup>		14,995	12,717	2,278
<b>Total</b>		<b>14,995</b>	<b>12,717</b>	<b>2,278</b>
Total ordinary annual services	A	14,995*	12,717	
Other Services				
Departmental non-operating				
Equity injections		0	0	0
<b>Total</b>		<b>0</b>	<b>0</b>	<b>0</b>
<b>Total other services</b>	B	<b>0</b>	<b>0</b>	
<b>Total Available Annual</b>				
<b>Appropriations and payments</b>		<b>14,995</b>	<b>12,717</b>	
<b>Total special appropriations</b>	C	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total special accounts</b>	D	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total resourcing and payments A+B+C+D</b>		<b>14,995</b>	<b>12,717</b>	
<b>Total net resourcing and payments for Office of the Australian Information Commissioner</b>		<b>14,995</b>	<b>12,717</b>	

\* Full year budget, including any subsequent adjustment made to the 2013–14 Budget.

1. Appropriation Bill (No.1) 2013–14. Includes Prior Year departmental appropriation and Section 31 relevant agency receipts.
2. Includes an amount of \$0.20m in 2013–14 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

<b>Expenses for Outcome 1</b>			
<b>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</b>			
	<b>Budget*</b>	<b>Actual</b>	<b>Variation</b>
	<b>2013–14</b>	<b>2013–14</b>	<b>2013–14</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
	(a)	(b)	(a) – (b)
<b>Programme 1.1: Complaint handling, compliance and monitoring, and education and promotion</b>			
Departmental expenses			
Departmental appropriation <sup>1</sup>	13,354	12,626	728
Expenses not requiring appropriation in the Budget year	842	1,008	(166)
<b>Total for Programme 1.1</b>	<b>14,196</b>	<b>13,634</b>	<b>562</b>
<b>Outcome 1 Totals by appropriation type</b>			
Departmental expenses			
Departmental appropriation <sup>1</sup>	13,354	12,626	728
Expenses not requiring appropriation in the Budget year	842	1,008	(166)
<b>Total expenses for Outcome 1</b>	<b>14,196</b>	<b>13,634</b>	<b>562</b>
	<b>2012–13</b>	<b>2013–14</b>	
<b>Average Staffing Level (number)</b>	85	78	

\* Full year budget, including any subsequent adjustment made to the 2013–14 Budget.

1. Departmental Appropriation combines 'Ordinary annual services (Appropriation Bill No. 1)' and 'Revenue from independent sources (Section 31)'.

## Appendix Two— Financial statements 2013–14

### **Financial statements — contents**

Independent Auditor’s Report  
Statement by the Chief Executive and Chief Finance Officer  
Statement of Comprehensive Income  
Statement of Financial Position  
Statement of Changes in Equity  
Cash Flow Statement  
Schedule of Commitments  
Schedule of Contingencies

### **Notes to and forming part of the financial statements**

Note 1: Summary of Significant Accounting Policies  
Note 2: Events After the Reporting Period  
Note 3: Expenses  
Note 4: Own-source Income  
Note 5: Fair Value Measurements  
Note 6: Financial Assets  
Note 7: Non-Financial Assets  
Note 8: Payables  
Note 9: Non-interest Bearing Liabilities  
Note 10: Provisions  
Note 11: Cash Flow Reconciliation  
Note 12: Contingent Assets and Liabilities  
Note 13: Senior Executive Remuneration  
Note 14: Remuneration of Auditors  
Note 15: Financial Instruments  
Note 16: Financial Assets Reconciliation  
Note 17: Appropriations  
Note 18: Compensation and Debt Relief  
Note 19: Reporting of Outcomes  
Note 20: Net Cash Appropriation Arrangements



## 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 2014, which comprise: a Statement by the Chief Executive and Chief Finance Officer; the Statement of Comprehensive Income; Statement of Financial Position; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; and Notes to and forming part of the financial statements comprising a Summary of Significant Accounting Policies and other explanatory information.

#### *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 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 2014 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



Peter Kerr  
Executive Director  
Delegate of the Auditor-General  
Canberra  
8 September 2014

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**Office of the Australian Information Commissioner**

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**FINANCIAL STATEMENTS**

*for the period ended 30 June 2014*

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**STATEMENT BY THE CHIEF EXECUTIVE AND CHIEF FINANCE OFFICER**

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In our opinion, the attached financial statements for the period ended 30 June 2014 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.



Handwritten signatures of Professor John McMillan and Alison Leonard.

Professor John McMillan  
Australian Information Commissioner

Alison Leonard  
Chief Finance Officer

8 September 2014

8 September 2014



**Statement of Comprehensive Income**  
*for the period ended 30 June 2014*

	Notes	2014 \$'000	2013 \$'000
<b>NET COST OF SERVICES</b>			
<b>Expenses</b>			
Employee benefits	3A	9,365	9,676
Supplier	3B	3,294	3,631
Depreciation and amortisation	3C	966	865
Write-down and impairment of assets	3D	9	191
<b>Total expenses</b>		<b>13,634</b>	<b>14,363</b>
<b>Own-Source Income</b>			
<b>Own-source revenue</b>			
Sale of goods and rendering of services	4A	2,768	2,933
<b>Total own-source revenue</b>		<b>2,768</b>	<b>2,933</b>
<b>Gains</b>			
Sale of assets	4B	-	1
Other gains	4C	33	32
<b>Total gains</b>		<b>33</b>	<b>33</b>
<b>Total own-source income</b>		<b>2,801</b>	<b>2,966</b>
<b>Net cost of services</b>		<b>(10,833)</b>	<b>(11,397)</b>
Revenue from Government	4D	10,601	10,764
<b>Deficit attributable to the Australian Government</b>		<b>(232)</b>	<b>(633)</b>
<b>OTHER COMPREHENSIVE INCOME</b>			
<b>Items not subject to subsequent reclassification to net cost of services</b>			
Changes in asset revaluation surplus		77	55
<b>Total other comprehensive income after income tax</b>		<b>77</b>	<b>55</b>
<b>Total comprehensive loss attributable to the Australian Government</b>		<b>(155)</b>	<b>(578)</b>

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

**Statement of Financial Position**  
as at 30 June 2014

	Notes	2014 \$'000	2013 \$'000
<b>ASSETS</b>			
<b>Financial Assets</b>			
Cash and cash equivalents	6A	1,115	802
Trade and other receivables	6B	3,261	2,284
Other financial assets	6C	-	149
<b>Total financial assets</b>		<u>4,376</u>	<u>3,235</u>
<b>Non-Financial Assets</b>			
Infrastructure, plant and equipment	7A,B	2,908	3,280
Intangibles	7C,D	1,427	1,935
Other non-financial assets	7E	51	88
<b>Total non-financial assets</b>		<u>4,386</u>	<u>5,303</u>
<b>Total assets</b>		<u>8,762</u>	<u>8,538</u>
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	8A	819	681
Other payables	8B	1,328	837
<b>Total payables</b>		<u>2,147</u>	<u>1,518</u>
<b>Non-interest Bearing Liabilities</b>			
Lease incentives	9A	1,695	1,936
<b>Total non-interest bearing liabilities</b>		<u>1,695</u>	<u>1,936</u>
<b>Provisions</b>			
Employee provisions	10A	2,243	2,272
<b>Total provisions</b>		<u>2,243</u>	<u>2,272</u>
<b>Total liabilities</b>		<u>6,085</u>	<u>5,726</u>
<b>Net assets</b>		<u>2,677</u>	<u>2,812</u>
<b>EQUITY</b>			
Contributed equity		1,973	1,953
Asset revaluation reserve		132	55
Retained earnings		572	804
<b>Total equity</b>		<u>2,677</u>	<u>2,812</u>

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

**Statement of Changes in Equity**  
for the period ended 30 June 2014

	Retained earnings		Asset Revaluation Reserve		Contributed equity		Total equity	
	2014	2013	2014	2013	2014	2013	2014	2013
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Opening balance</b>								
Balance carried forward from previous period	804	1,428	55	-	1,953	1,933	2,812	3,361
Adjustment for changes in accounting policies	-	9	-	-	-	-	-	9
<b>Adjusted opening balance</b>	<b>804</b>	<b>1,437</b>	<b>55</b>	<b>-</b>	<b>1,953</b>	<b>1,933</b>	<b>2,812</b>	<b>3,370</b>
<b>Comprehensive income</b>								
Deficit for the period	(232)	(633)					(232)	(633)
Other comprehensive income	-	-	77	55	-	-	77	55
<b>Total comprehensive income</b>	<b>(232)</b>	<b>(633)</b>	<b>77</b>	<b>55</b>	<b>-</b>	<b>-</b>	<b>(155)</b>	<b>(578)</b>
<b>Transactions with owners</b>								
<b>Contributions by owners</b>								
Departmental capital budget	-	-	-	-	20	20	20	20
<b>Sub-total transactions with owners</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>20</b>	<b>20</b>	<b>20</b>	<b>20</b>
<b>Closing balance attributable to the Australian Government</b>	<b>572</b>	<b>804</b>	<b>132</b>	<b>55</b>	<b>1,973</b>	<b>1,953</b>	<b>2,677</b>	<b>2,812</b>

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

**Cash Flow Statement***for the period ended 30 June 2014*

	Notes	2014 \$'000	2013 \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations		10,601	10,764
Cash transferred from the Official Public Account		2,300	4,333
Sales of goods and rendering of services		3,258	2,629
Net GST received		15	357
<b>Total cash received</b>		<b>16,174</b>	<b>18,083</b>
<b>Cash used</b>			
Employees		(9,358)	(10,108)
Suppliers		(3,323)	(4,554)
Section 31 receipts transferred to the Official Public Account		(3,180)	(2,949)
<b>Total cash used</b>		<b>(15,861)</b>	<b>(17,611)</b>
<b>Net cash from operating activities</b>	11	<b>313</b>	<b>472</b>
<b>INVESTING ACTIVITIES</b>			
<b>Cash used</b>			
Purchase of infrastructure, plant and equipment		-	(198)
Purchase of intangibles		(18)	(206)
<b>Total cash used</b>		<b>(18)</b>	<b>(404)</b>
<b>Net cash used by investing activities</b>		<b>(18)</b>	<b>(404)</b>
<b>FINANCING ACTIVITIES</b>			
<b>Cash received</b>			
Contributed equity		18	70
<b>Total cash received</b>		<b>18</b>	<b>70</b>
<b>Net increase (decrease) in cash held</b>		<b>313</b>	<b>138</b>
Cash and cash equivalents at the beginning of the reporting period		802	664
<b>Cash and cash equivalents at the end of the reporting period</b>	6A	<b>1,115</b>	<b>802</b>

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

## Schedule of Commitments

as at 30 June 2014

	2014 \$'000	2013 \$'000
<b>BY TYPE</b>		
<b>Commitments receivable</b>		
Other commitments	(1,633)	(3,543)
Net GST recoverable on commitments	(663)	(1,080)
<b>Total commitments receivable</b>	<b>(2,296)</b>	<b>(4,623)</b>
<b>Commitments payable</b>		
<b>Other commitments</b>		
Operating leases <sup>1</sup>	8,170	14,101
Other	762	1,319
<b>Total other commitments</b>	<b>8,932</b>	<b>15,420</b>
<b>Total commitments payable</b>	<b>8,932</b>	<b>15,420</b>
<b>Net commitments by type</b>	<b>6,636</b>	<b>10,797</b>
<b>BY MATURITY</b>		
<b>Commitments receivable</b>		
<b>Other Commitments receivable</b>		
One year or less	(1,552)	(3,462)
From one to five years	(626)	(650)
Over five years	(118)	(511)
<b>Total Other Commitments receivable</b>	<b>(2,296)</b>	<b>(4,623)</b>
<b>Commitments payable</b>		
<b>Operating lease commitments</b>		
One year or less	1,088	1,328
From one to five years	5,789	7,148
Over five years	1,293	5,625
<b>Total operating lease commitments</b>	<b>8,170</b>	<b>14,101</b>
<b>Other Commitments</b>		
One year or less	762	1,319
From one to five years	-	-
<b>Total other commitments</b>	<b>762</b>	<b>1,319</b>
<b>Total commitments payable</b>	<b>8,932</b>	<b>15,420</b>
<b>Net commitments by maturity</b>	<b>6,636</b>	<b>10,797</b>

Note: Commitments are GST inclusive where relevant

Nature of Leases/General Description
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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 2014*

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	<b>2014</b>	2013
	<b>\$'000</b>	\$'000
<b>Contingent assets</b>	-	-
<b>Total contingent assets</b>	-	-
<b>Contingent liabilities</b>	-	-
<b>Total contingent liabilities</b>	-	-
<b>Net contingent liabilities</b>	-	-

Details of each class of contingent liabilities and contingent assets listed above are disclosed in Note 12, 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 2014

**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 have been prepared on a going concern basis notwithstanding that from 1 January 2015 the OAIC will cease operating and funding for ongoing functions will be transferred to other agencies. From 1 January 2015 an Office of the Privacy Commissioner will be established. The Privacy Commissioner will be responsible for the exercise of statutory privacy functions under the Privacy Act and related legislation. From 1 January 2015 the right to external merit review of FOI decisions will lie directly with the Administrative Appeals Tribunal, and unresolved applications before the OAIC will be transferred to the Tribunal for completion. Functions related to FOI guidelines and FOI statistics will be administered by the Attorney-General's Department. Complaints about FOI administration will lie directly with the Commonwealth Ombudsman, and unresolved complaints before the OAIC will be transferred to the Ombudsman. The final distribution of assets and liabilities between these agencies has not yet been determined.

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 statement of financial position 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.

During 2012-13 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 has reviewed its processes and controls over payments for these items to minimise the possibility for future breaches as a result of these payments. The OAIC has determined that there is a low risk of the certain circumstances mentioned in the legal advice applying to the OAIC. The OAIC is not aware of any specific breaches of Section 83 in respect of these items.

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 1: Summary of Significant Accounting Policies (continued)**

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* [2014] HCA 23, 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**

In the process of applying the accounting policies listed in this note, the OAIC has made the following judgements that have significant impact on the amounts recorded in the financial statements:

The fair value of infrastructure, plant and equipment has been taken to be the market value of similar assets as determined by an independent valuer;

The relevant government bond rate has been used to discount non-current liabilities in accordance with the FMOs; and

The liability for long service leave has been estimated as per the FMOs. This takes into account expected salary growth, attrition and future discounting using the government bond.

**1.4 New Australian Accounting Standards**

**Adoption of New Australian Accounting Standard Requirements**

The following new standards/revised standards/interpretations/amending standards issued prior to the sign-off date that were applicable to the current reporting period:

AASB 119 *Employee Benefits 2014*

AASB 2011-10 *Australian Accounting Standards arising from AASB 119 (September 2011)*

AASB 13 *Fair Value Measurement 2014*

AASB 2011-8 *Amendments to Australian Accounting Standards arising from AASB 13*

Other new standards, revised standards, interpretations and amending standards that were issued prior to the sign-off date and are applicable to the current reporting period did not have a financial impact, and are not expected to have a future financial impact on the OAIC.

**Future Australian Accounting Standard Requirements**

The following new standard will have a disclosure impact only in future reporting periods:

AASB 1055 - *Budgetary Reporting - March 2013 (Principal)* – Disclosure impact

**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.



**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 1: Summary of Significant Accounting Policies (continued)**

**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.

***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 2014. 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's administered schedules and notes.

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. 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 2014

**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 Fair Value Measurement**

The OAIC deems transfers between levels of the fair value hierarchy to have occurred at the date of the event or change in circumstances that caused the transfer. There were no transfers in or out of any levels during the reporting period.

**1.11 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.

**1.12 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.

**1.13 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 2014

**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).

**1.14 Contingent Liabilities and Contingent Assets**

Contingent liabilities and contingent assets are not recognised in the statement of financial position 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.

**1.15 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.

**1.16 Infrastructure, Plant and Equipment**

**Asset Recognition Threshold**

Purchases of infrastructure, plant and equipment are recognised initially at cost in the statement of financial position, 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 2014

**Note 1: Summary of Significant Accounting Policies (continued)**

**Revaluations**

Fair values for each class of asset are determined as shown below:

<b>Asset Class</b>	<b>Fair Value Measured at:</b>
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. 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:

<b>Asset Class</b>	<b>2014</b>	<b>2013</b>
Computer, plant and equipment	<b>4 to 10 years</b>	4 to 10 years
Leasehold improvements	<b>Lease term</b>	Lease term

**Impairment**

All assets were assessed for impairment at 30 June 2014. 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**  
for the period ended 30 June 2014

**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.

**1.17 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 (2013: 2 to 5 years).

All software assets were assessed for indications of impairment as at 30 June 2014.

**1.18 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**

In the 2014–15 Budget, the Australian Government announced its decision to set up new arrangements for privacy and FOI regulation to streamline and reduce complexity and duplication in the current system. From 1 January 2015 the OAIC will cease operating and funding for ongoing functions will be transferred to other agencies. The decision will require legislative changes.

From 1 January 2015 an Office of the Privacy Commissioner will be established. The Privacy Commissioner will be responsible for the exercise of statutory privacy functions under the Privacy Act and related legislation. From 1 January 2015 the right to external merit review of FOI decisions will lie directly with the Administrative Appeals Tribunal, and unresolved applications before the OAIC will be transferred to the Tribunal for completion. Functions related to FOI guidelines and FOI statistics will be administered by the Attorney-General's Department. Complaints about FOI administration will lie directly with the Commonwealth Ombudsman, and unresolved complaints before the OAIC will be transferred to the Ombudsman.

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 3: Expenses**

	2014 \$'000	2013 \$'000
<b>Note 3A: Employee Benefits</b>		
Wages and salaries	7,373	7,433
Superannuation:		
Defined contribution plans	710	664
Defined benefit plans	597	656
Leave and other entitlements	635	654
Separation and redundancies	26	240
Other employee expenses	24	29
<b>Total employee benefits</b>	<b>9,365</b>	<b>9,676</b>
<b>Note 3B: Suppliers</b>		
<b>Goods and services supplied or rendered</b>		
Insurance	18	16
Office consumables	41	46
Official travel	197	163
Printing and publications	9	12
Professional services and fees	1,463	1,811
Property outgoings	277	303
Reference materials, subscriptions and licences	107	94
Staff training	133	82
Telecommunications	108	171
Other	67	47
<b>Total goods and services supplied or rendered</b>	<b>2,420</b>	<b>2,745</b>
<b>Goods supplied in connection with</b>		
Related entities	2	8
External parties	174	164
<b>Total goods supplied</b>	<b>176</b>	<b>172</b>
<b>Services rendered in connection with</b>		
Related entities	1,347	1,586
External parties	897	987
<b>Total services rendered</b>	<b>2,244</b>	<b>2,573</b>
<b>Total goods and services supplied or rendered</b>	<b>2,420</b>	<b>2,745</b>
<b>Other suppliers</b>		
Operating lease rentals in connection with		
Related parties		
Sublease	827	737
External parties		
Minimum lease payments	-	97
Workers compensation expenses	47	52
<b>Total other suppliers</b>	<b>874</b>	<b>886</b>
<b>Total suppliers</b>	<b>3,294</b>	<b>3,631</b>

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 3C: Depreciation and Amortisation****Depreciation**

Infrastructure, plant and equipment		
Computer, plant and equipment	128	133
<b>Total depreciation</b>	<b>128</b>	<b>133</b>

**Amortisation**

Infrastructure, plant and equipment		
Leasehold improvements	312	262
Intangibles		
Computer software	526	470
<b>Total amortisation</b>	<b>838</b>	<b>732</b>
<b>Total depreciation and amortisation</b>	<b>966</b>	<b>865</b>

**Note 3D: Write-Down and Impairment of Assets****Asset write-downs and impairments from**

Impairment of infrastructure, plant and equipment	9	102
Revaluation decrement - computer, plant and equipment	-	89
<b>Total write-down and impairment of assets</b>	<b>9</b>	<b>191</b>

**Note 4: Own-Source Income**

	2014	2013
<b>OWN-SOURCE REVENUE</b>	<b>\$'000</b>	<b>\$'000</b>

**Note 4A: Sale of Goods and Rendering of Services****Rendering of services in connection with**

Related entities	2,631	2,748
External parties	137	185
<b>Total rendering of services</b>	<b>2,768</b>	<b>2,933</b>
<b>Total sale of goods and rendering of services</b>	<b>2,768</b>	<b>2,933</b>

**GAINS****Note 4B: Gains from Sale of Assets****Property, plant and equipment:**

Proceeds from sale	-	1
<b>Total gains from sale of assets</b>	<b>-</b>	<b>1</b>

**Note 4C: Other Gains**

Resources received free of charge	33	32
<b>Total other gains</b>	<b>33</b>	<b>32</b>

**REVENUE FROM GOVERNMENT****Note 4B: Revenue from Government****Appropriations:**

Departmental appropriations	10,601	10,764
<b>Total revenue from Government</b>	<b>10,601</b>	<b>10,764</b>

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 5: Fair Value Measurements**

The following tables provide an analysis of assets and liabilities that are measured at fair value. The different levels of the fair value hierarchy are defined below.

Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities that the entity can access at measurement date.

Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3: Unobservable inputs for the asset or liability.

**Note 5A: Fair Value Measurements**

**Fair value measurements at the end of the reporting period by hierarchy for assets in 2014**

	Fair value \$'000	Fair value measurements at the end of the reporting period using		
		Level 1 inputs \$'000	Level 2 inputs \$'000	Level 3 inputs \$'000
<b>Non-financial assets</b>				
Infrastructure, plant and equipment	2,908	-	2,908	-
<b>Total non-financial assets</b>	<b>2,908</b>	<b>-</b>	<b>2,908</b>	<b>-</b>
<b>Total fair value measurements of assets in the statement of financial position</b>	<b>2,908</b>	<b>-</b>	<b>2,908</b>	<b>-</b>

**Fair value measurements - highest and best use differs from current use for non-financial assets (NFAs)**

There were no NFAs where the highest and best use differed from its current use during the reporting period.

**Note 5B: Level 1 and Level 2 Transfers for Recurring Fair Value Measurements**

The OAIC made no transfers between level 1 and level 2 for recurring fair value measurements during the reporting period.

The OAIC's policy for determining when transfers between the levels are deemed to have occurred can be found in Note 1.

**Note 5C: Valuation Techniques and Inputs for Level 2 and Level 3 Fair Value Measurements**

**Level 2 and 3 fair value measurements - valuation technique and the inputs used for assets in 2014**

	Category (Level 2 or Level 3)	Fair Value \$'000	Valuation Technique	Inputs used
<b>Assets not measured at fair value in the statement of financial position</b>				
Infrastructure, plant and equipment	Level 2	2,908	Market Approach	Market replacement cost less estimate of written down value of asset used

**Note 5D: Reconciliation of Recurring Level 3 Fair Value Measurements**

The OAIC had no recurring level 3 fair value measurements for assets or liabilities during the reporting period.

The OAIC's policy for determining when transfers between the levels are deemed to have occurred can be found in Note 1.



**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 6: Financial Assets**

	2014 \$'000	2013 \$'000
<b>Note 6A: Cash and Cash Equivalents</b>		
Cash on hand or on deposit	1,115	802
<b>Total cash and cash equivalents</b>	<b>1,115</b>	<b>802</b>
<b>Note 6B: Trade and Other Receivables</b>		
<b>Goods and services receivables in connection with</b>		
Related entities	661	480
External parties	2	92
<b>Total goods and services receivables</b>	<b>663</b>	<b>572</b>
<b>Appropriations receivables</b>		
Existing programs	2,592	1,710
<b>Total appropriations receivable</b>	<b>2,592</b>	<b>1,710</b>
<b>Other receivables</b>		
GST receivable from the Australian Taxation Office	6	2
<b>Total other receivables</b>	<b>6</b>	<b>2</b>
<b>Total trade and other receivables (gross)</b>	<b>3,261</b>	<b>2,284</b>
<b>Trade and other receivables (net) expected to be recovered</b>		
No more than 12 months	3,261	2,284
<b>Total trade and other receivables (net)</b>	<b>3,261</b>	<b>2,284</b>
<b>Trade and other (gross) receivables aged as follows</b>		
Not overdue	3,260	2,253
Overdue by:		
0 to 30 days	-	1
31 to 60 days	-	1
61 to 90 days	1	29
More than 90 days	-	-
<b>Total trade and other receivables (gross)</b>	<b>3,261</b>	<b>2,284</b>
<b>Note 6C: Other Financial Assets</b>		
Accrued revenue	-	149
<b>Total other financial assets</b>	<b>-</b>	<b>149</b>
<b>Other financial assets expected to be recovered</b>		
No more than 12 months	-	149
<b>Total other financial assets</b>	<b>-</b>	<b>149</b>

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 7: Non-Financial Assets**

	2014 \$'000	2013 \$'000
<b>Note 7A: Infrastructure, Plant and Equipment</b>		
<b>Computer, plant and equipment</b>		
Fair value	302	404
<b>Total computer, plant and equipment</b>	<b>302</b>	<b>404</b>
<b>Leasehold improvements</b>		
Fair value	2,606	2,876
<b>Total leasehold improvements</b>	<b>2,606</b>	<b>2,876</b>
<b>Total infrastructure, plant and equipment</b>	<b>2,908</b>	<b>3,280</b>

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 2014, an independent valuer conducted the revaluations.

A revaluation increment of \$41,525 for leasehold improvements (2013: \$54,871) and a revaluation increment of \$35,366 for computer, plant and equipment (2013: \$89,033 decrement expensed) were credited to the asset revaluation surplus by asset class and included in the equity section of the balance sheet; no increments/decrements were expensed in the current reporting period.

**Note 7B: Reconciliation of the Opening and Closing Balances of Infrastructure, Plant and Equipment 2014**

	Computer, plant & equipment \$'000	Leasehold improvements \$'000	Total \$'000
<b>As at 1 July 2013</b>			
Gross book value	404	2,876	3,280
Accumulated depreciation and impairment	-	-	-
<b>Net book value 1 July 2013</b>	<b>404</b>	<b>2,876</b>	<b>3,280</b>
Additions:			
By purchase	-	-	-
Revaluations recognised in other comprehensive income	35	42	77
Depreciation/Amortisation expense	(128)	(312)	(440)
Disposals:			
Other	(9)	-	(9)
<b>Net book value 30 June 2014</b>	<b>302</b>	<b>2,606</b>	<b>2,908</b>
<b>Net book value as of 30 June 2014 represented by:</b>			
Gross book value	302	2,606	2,908
Accumulated depreciation and impairment	-	-	-
	<b>302</b>	<b>2,606</b>	<b>2,908</b>

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 7B: Reconciliation of the Opening and Closing Balances of Infrastructure, Plant and Equipment 2013**

	Computer, plant & equipment \$'000	Leasehold improvements \$'000	Total \$'000
<b>As at 1 July 2012</b>			
Gross book value	540	3,557	4,097
Accumulated depreciation and impairment	(60)	(424)	(484)
<b>Net book value 1 July 2012</b>	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 <sup>1</sup>	(102)	(50)	(152)
<b>Net book value 30 June 2013</b>	404	2,876	3,280
<b>Net book value as of 30 June 2013 represented by:</b>			
Gross book value	404	2,876	3,280
Accumulated depreciation and impairment	-	-	-
	404	2,876	3,280

<sup>1</sup> Other movements relate to assets written-down (refer Note 3D) and leasehold fit-out refund.

	2014 \$'000	2013 \$'000
<b>Note 7C: Intangibles</b>		
<b>Computer software:</b>		
Work in progress	-	96
Internally developed – in use	2,541	2,427
Accumulated amortisation	(1,114)	(588)
<b>Total computer software</b>	1,427	1,935
<b>Total intangibles</b>	1,427	1,935

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 7D: Reconciliation of the Opening and Closing Balances of Intangibles 2014**

	Work-in- progress	Computer software internally developed - in use \$'000	Total \$'000
<b>As at 1 July 2013</b>			
Gross book value	96	2,427	2,523
Accumulated amortisation and impairment	-	(588)	(588)
<b>Net book value 1 July 2013</b>	96	1,839	1,935
Additions:			
By purchase or internally developed	18	-	18
Transfer work-in-progress	(114)	114	-
Amortisation	-	(526)	(526)
<b>Net book value 30 June 2014</b>	-	1,427	1,427
<b>Net book value as of 30 June 2014 represented by:</b>			
Gross book value	-	2,541	2,541
Accumulated amortisation and impairment	-	(1,114)	(1,114)
	-	1,427	1,427

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 7D: Reconciliation of the Opening and Closing Balances of Intangibles 2013**

	Work- in- progress	Computer software internally developed - in use \$'000	Total \$'000
<b>As at 1 July 2012</b>			
Gross book value	-	2,318	2,318
Accumulated amortisation and impairment	-	(118)	(118)
<b>Net book value 1 July 2012</b>	-	2,200	2,200
Additions:			
By purchase or internally developed	96	109	205
Amortisation	-	(470)	(470)
<b>Net book value 30 June 2013</b>	96	1,839	1,935
<b>Net book value as of 30 June 2013 represented by:</b>			
Gross book value	96	2,427	2,523
Accumulated amortisation and impairment	-	(588)	(588)
<b>Net book value 30 June 2013</b>	96	1,839	1,935
	<b>2014</b>	<b>2013</b>	
	<b>\$'000</b>	<b>\$'000</b>	
<b>Note 7E: Other Non-Financial Assets</b>			
Prepayments	<b>51</b>	<b>88</b>	
<b>Total other non-financial assets</b>	<b>51</b>	<b>88</b>	
<b>Other non-financial assets expected to be recovered</b>			
No more than 12 months	<b>51</b>	<b>88</b>	
<b>Total other non-financial assets</b>	<b>51</b>	<b>88</b>	

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**  
for the period ended 30 June 2014

**Note 8: Payables**

	2014 \$'000	2013 \$'000
<b>Note 8A: Suppliers</b>		
Trade creditors and accruals	443	424
Rent payable	376	257
<b>Total suppliers payable</b>	<b>819</b>	<b>681</b>
<b>Suppliers expected to be settled</b>		
No more than 12 months	443	424
More than 12 months	376	257
<b>Total suppliers</b>	<b>819</b>	<b>681</b>
<b>Suppliers in connection with</b>		
Related parties	167	220
External parties	652	461
<b>Total suppliers</b>	<b>819</b>	<b>681</b>
Settlement is generally made accordance with the terms of the supplier invoice.		
<b>Note 8B: Other Payables</b>		
Wages and salaries	242	185
Superannuation	43	34
Other employee expenses	11	19
Revenue received in advance	1,032	599
<b>Total other payables</b>	<b>1,328</b>	<b>837</b>
<b>Other payables expected to be settled in</b>		
No more than 12 months	1,328	837
<b>Total other payables</b>	<b>1,328</b>	<b>837</b>

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 9: Non-interest Bearing Liabilities**

	2014 \$'000	2013 \$'000
<b>Note 9A: Non-interest Bearing Liabilities</b>		
Lease incentives <sup>1</sup>	1,695	1,936
<b>Total non-interest bearing liabilities</b>	<b>1,695</b>	<b>1,936</b>
<b>Non-interest bearing liabilities expected to be settled</b>		
Within 1 year	241	241
Between 1 to 5 years	1,207	1,205
More than 5 years	247	490
<b>Total non-interest bearing liabilities</b>	<b>1,695</b>	<b>1,936</b>

<sup>1</sup> Lease incentive included in property operating lease.

**Note 10: Provisions**

	2014 \$'000	2013 \$'000
<b>Note 10A: Employee Provisions</b>		
Leave	2,243	2,272
<b>Total employee provisions</b>	<b>2,243</b>	<b>2,272</b>
<b>Employee provisions expected to be settled in</b>		
No more than 12 months	1,641	1,700
More than 12 months	602	572
<b>Total employee provisions</b>	<b>2,243</b>	<b>2,272</b>

**Note 11: Cash Flow Reconciliation**

	2014 \$'000	2013 \$'000
<b>Reconciliation of cash and cash equivalents as per Statement of Financial Position to Cash Flow Statement</b>		
<b>Cash and cash equivalents as per:</b>		
Cash flow statement	1,115	802
Statement of Financial Position	1,115	802
<b>Difference</b>	<b>-</b>	<b>-</b>
<b>Reconciliation of net cost of services to net cash from operating activities:</b>		
Net cost of services	(10,833)	(11,397)
Add revenue from Government	10,601	10,764
<b>Adjustments for non-cash items</b>		
Depreciation / amortisation	966	865
Net write down of non-financial assets	9	191
Unwinding of leasehold fitout incentive	(241)	(253)
<b>Changes in assets / liabilities</b>		
(Increase) / decrease in net receivables	(971)	1,000
(Increase) / decrease in other financial assets	149	(149)
(Increase) / decrease in other non-financial assets	36	(47)
Increase / (decrease) in employee provisions	(28)	(377)
Increase / (decrease) in supplier payables	135	(329)
Increase / (decrease) in other payables	490	204
<b>Net cash from/(used by) operating activities</b>	<b>313</b>	<b>472</b>

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 12: Contingent Assets and Liabilities**

**Unquantifiable Contingencies**

At 30 June 2014, the OAIC had no unquantifiable contingencies.

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 13: Senior Executive Remuneration**

**Note 13A: Senior Executive Remuneration Expenses for the Reporting Period**

	2014 \$	2013 \$
<b>Short-term employee benefits:</b>		
Salary	1,408,618	1,152,258
Other	-	7,200
<b>Total short-term employee benefits</b>	<b>1,408,618</b>	<b>1,159,458</b>
<b>Post-employment benefits:</b>		
Superannuation	203,383	181,629
<b>Total post-employment benefits</b>	<b>203,383</b>	<b>181,629</b>
<b>Other long-term employee benefits:</b>		
Annual leave accrued	12,954	23,513
Long-service leave	32,662	15,823
<b>Total other long-term employee benefits</b>	<b>45,616</b>	<b>39,336</b>
<b>Termination benefits:</b>		
Separation and redundancy payments	-	130,343
<b>Total termination benefits</b>	<b>-</b>	<b>130,343</b>
<b>Total senior executive remuneration expenses</b>	<b>1,657,617</b>	<b>1,510,766</b>

1. Note 13A is prepared on an accrual basis.

2. Note 13A excludes acting arrangements and part-year service where total remuneration expensed as a senior executive was less than \$195,000.

**Note 13B: Average Annual Reportable Remuneration Paid to Substantive Senior Executives during the Reporting Period**

**Average annual reportable remuneration paid to substantive senior executives in 2014**

Average annual reportable remuneration <sup>1</sup>	Substantive senior executives No.	Reportable salary <sup>2</sup> \$	Contributed superannuation <sup>3</sup> \$	Reportable allowances <sup>4</sup> \$	Bonus paid <sup>5</sup> \$	Total reportable remuneration \$
<b>Total reportable remuneration (including part-time arrangements):</b>						
Less than \$195,000	1	163,171	28,600	-	-	191,771
\$195,000 to \$224,999	2	187,568	29,483	-	-	217,051
\$345,000 to \$374,999	2	320,722	48,895	2,094	-	371,711
\$435,000 to \$464,999	1	392,037	46,626	238	-	438,901
<b>Total number of substantive senior executives</b>	<b>6</b>					

**Average annual reportable remuneration paid to substantive senior executives in 2013**

Average annual reportable remuneration <sup>1</sup>	Substantive senior executives No.	Reportable salary <sup>2</sup> \$	Contributed superannuation <sup>3</sup> \$	Reportable allowances <sup>4</sup> \$	Bonus paid <sup>5</sup> \$	Total reportable remuneration \$
<b>Total reportable remuneration (including part-time arrangements):</b>						
Less than \$195,000	2	121,433	7,592	3,724	-	132,748
\$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
<b>Total number of substantive senior executives</b>	<b>6</b>					

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);
- except 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 13C: 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 \$195,000 or more and did not have a role as a senior executive and are therefore not disclosed as a senior executive in Notes 13A and Note 13B above. (2013: Nil)



**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
 for the period ended 30 June 2014

**Note 14: Remuneration of Auditors**

	<u>2014</u> <u>\$'000</u>	<u>2013</u> <u>\$'000</u>
Financial statement audit services were provided free of charge to the OAIC by the Australian National Audit Office (ANAO).		
<b>Fair value of the services provided</b>		
Financial statement audit services	<u>33</u>	<u>32</u>
<b>Total</b>	<u>33</u>	<u>32</u>

No other services were provided by the ANAO.

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 15: Financial Instruments**

	2014 \$'000	2013 \$'000
<b>Note 15A: Categories of Financial Instruments</b>		
<b>Financial Assets</b>		
<b>Loans and receivables:</b>		
Cash and cash equivalents	1,115	802
Trade receivables	663	572
<b>Carrying amount of financial assets</b>	<b>1,778</b>	<b>1,374</b>
<b>Financial Liabilities</b>		
<b>Other liabilities:</b>		
Supplier payables	819	681
Lease incentives	1,695	1,936
Revenue received in advance	1,032	599
<b>Carrying amount of financial liabilities</b>	<b>3,546</b>	<b>3,216</b>

**Note 15B: Fair Value of Financial Instruments**

	Carrying amount 2014 \$'000	Fair value 2014	Carrying amount 2013 \$'000	Fair value 2013 \$'000
<b>Financial Assets</b>				
Cash and cash equivalents	1,115	1,115	802	802
Trade receivables	663	663	572	572
	<b>1,778</b>	<b>1,778</b>	<b>1,374</b>	<b>1,374</b>
<b>Financial Liabilities</b>				
Supplier Payables	819	819	681	681
Lease incentives	1,695	1,695	1,936	1,936
Revenue received in advance	1,032	1,032	599	599
	<b>3,546</b>	<b>3,546</b>	<b>3,216</b>	<b>3,216</b>

**Note 15C: 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 those assets as indicated in the statement of financial position.

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 2014 \$'000	Not past due nor impaired 2013 \$'000	Past due or impaired 2014 \$'000	Past due or impaired 2013 \$'000
<b>Loans and receivables</b>				
Cash and cash equivalents	1,115	802	-	-
Trade receivables	662	541	1	31
	<b>1,777</b>	<b>1,343</b>	<b>1</b>	<b>31</b>

**Ageing of financial assets that were past due but not impaired for 2014**

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Trade receivables	-	-	1	-	1
	-	-	1	-	1

**Ageing of financial assets that were past due but not impaired for 2013**

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Trade receivables	1	1	29	-	31
	1 #	1	29	-	31

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 15D: 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 2014**

	On demand \$'000	within 1 year \$'000	1 to 2 years \$'000	2 to 5 years \$'000	> 5 years \$'000	Total \$'000
<b>Other liabilities</b>						
Supplier payables	-	443	-	-	376	819
Lease incentives	-	241	482	723	249	1,695
Revenue received in advance	-	1,032	-	-	-	1,032
<b>Total</b>	-	1,716	482	723	625	3,546

**Maturities for non-derivative financial liabilities 2013**

	On demand \$'000	within 1 year \$'000	1 to 2 years \$'000	2 to 5 years \$'000	> 5 years \$'000	Total \$'000
<b>Other liabilities</b>						
Supplier payables	-	424	-	-	257	681
Lease incentives	-	241	482	723	490	1,936
Revenue received in advance	-	599	-	-	-	599
<b>Total</b>	-	1,264	482	723	747	3,216

The OAIC has no derivative financial liabilities in both the current and prior financial years.

**Note 15E: 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'.

## Note 16: Financial Assets Reconciliation

<b>Financial assets</b>	<b>Notes</b>	<b>2014 \$'000</b>	<b>2013 \$'000</b>
<b>Total financial assets as per statement of financial position</b>		<b>4,376</b>	3,235
Less: non-financial instrument components			
GST Receivable from the Australian Taxation Office	6B	6	2
Appropriations receivable	6B	2,592	1,710
Accrued revenue	6C	-	149
Total non-financial instrument components		<u>2,598</u>	<u>1,861</u>
<b>Total financial assets as per financial instruments note</b>		<u><b>1,778</b></u>	<u>1,374</u>

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 17: Appropriations****Table A: Annual Appropriations ('Recoverable GST exclusive')**

	2014 Appropriations							Appropriation applied in 2014 (current and prior years) \$'000	Variance <sup>2</sup> \$'000
	Appropriation Act			FMA Act			Total appropriation \$'000		
	Annual Appropriation \$'000	Appropriations reduced <sup>1</sup> \$'000	AFM \$'000	Section 30 \$'000	Section 31 \$'000	Section 32 \$'000			
<b>DEPARTMENTAL</b>									
Ordinary annual services	10,601	-	-	-	3,164	-	13,765	(12,759)	1,006
Other services	-	-	-	-	-	-	-	-	-
Equity	-	-	-	-	-	-	-	-	-
Loans	-	-	-	-	-	-	-	-	-
<b>Total departmental</b>	<b>10,601</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>3,164</b>	<b>-</b>	<b>13,765</b>	<b>(12,759)</b>	<b>1,006</b>

**Notes:**

1. Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental appropriation is not required and request that the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament. In 2014, there was no reduction in departmental and non-operating departmental appropriations.

2. Variance represents unspent appropriation funding.

	2013 Appropriations							Appropriation applied in 2013 (current and prior years) \$'000	Variance <sup>2</sup> \$'000
	Appropriation Act			FMA Act			Total appropriation \$'000		
	Annual Appropriation \$'000	Appropriations reduced <sup>1</sup> \$'000	AFM \$'000	Section 30 \$'000	Section 31 \$'000	Section 32 \$'000			
<b>DEPARTMENTAL</b>									
Ordinary annual services	10,821	-	-	-	2,580	-	13,401	(14,631)	(1,230)
Other services	-	-	-	-	-	-	-	-	-
Equity	-	-	-	-	-	-	-	-	-
Loans	-	-	-	-	-	-	-	-	-
<b>Total departmental</b>	<b>10,821</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,580</b>	<b>-</b>	<b>13,401</b>	<b>(14,361)</b>	<b>(1,230)</b>

**Notes:**

1. Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental appropriation is not required and request that the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament. In 2014, there was no reduction in departmental and non-operating departmental appropriations.

2. Variance represents unspent appropriation funding in the current year drawn in the current year.

**Table B: Departmental Capital Budget ('Recoverable GST exclusive')**

	2014 Capital Budget Appropriations				Capital Budget Appropriations applied in 2014 (current and prior years)			Variance <sup>2</sup> \$'000	
	Appropriation Act		FMA Act		Total Capital Budget Appropriations \$'000	Payments for non-financial assets <sup>1</sup> \$'000	Payments for other purposes \$'000		Total payments \$'000
	Annual Capital Budget \$'000	Appropriations reduced \$'000	Section 32 \$'000	Section 33 \$'000					
<b>DEPARTMENTAL</b>									
Ordinary annual services - Departmental Capital Budget <sup>1</sup>	20	-	-	-	20	(18)	-	(18)	2

**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 undrawn and unspent departmental capital budget appropriation.

	2013 Capital Budget Appropriations				Capital Budget Appropriations applied in 2013 (current and prior years)			Variance <sup>2</sup> \$'000	
	Appropriation Act		FMA Act		Total Capital Budget Appropriations \$'000	Payments for non-financial assets <sup>1</sup> \$'000	Payments for other purposes \$'000		Total payments \$'000
	Annual Capital Budget \$'000	Appropriations reduced \$'000	Section 32 \$'000	Section 33 \$'000					
<b>DEPARTMENTAL</b>									
Ordinary annual services - Departmental Capital Budget <sup>1</sup>	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.

**Table C: Unspent Annual Appropriations ('Recoverable GST exclusive')**

	2014 \$'000	2013 \$'000
<b>DEPARTMENTAL</b>		
Appropriation Act (No. 1) 2012-2013	-	1,747
Appropriation Act (No. 1) 2013-2014	2,590	-
Capital Budget Bill 1 (DCB) 2013-2014	2	-
Cash held by the OAIC	1,115	802
<b>Total</b>	<b>3,707</b>	<b>2,549</b>

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 18: Compensation and Debt Relief**

The OAIC made no payments for compensation or debt relief during the reporting period.

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 19: Reporting of Outcomes**

**Note 19A: Net Cost of Outcome Delivery**

	Outcome 1		Total	
	2014	2013	2014	2013
	\$'000	\$'000	\$'000	\$'000
<b>Departmental</b>				
Expenses	13,634	14,363	13,634	14,363
Own-source income	2,801	2,966	2,801	2,966
<b>Net cost of outcome delivery</b>	<b>(10,833)</b>	<b>(11,397)</b>	<b>(10,833)</b>	<b>(11,397)</b>

**Note 19B: Major Classes of Departmental Expense, Income, Assets and Liabilities by Outcome**

	Outcome 1		Total	
	2014	2013	2014	2013
	\$'000	\$'000	\$'000	\$'000
<b>Expenses</b>				
Employee benefits	9,365	9,676	9,365	9,676
Supplier	3,294	3,631	3,294	3,631
Depreciation and Amortisation	966	865	966	865
Write-down and impairment of assets	9	191	9	191
<b>Total</b>	<b>13,634</b>	<b>14,363</b>	<b>13,634</b>	<b>14,363</b>
<b>Income</b>				
Sales of goods and services	2,768	2,933	2,768	2,933
Revenue from Government	10,601	10,764	10,601	10,764
Sale of assets	-	1	-	1
Other gains	33	32	33	32
<b>Total</b>	<b>13,402</b>	<b>13,730</b>	<b>13,402</b>	<b>13,730</b>
<b>Assets</b>				
Cash and cash equivalents	1,115	802	1,115	802
Trade and other receivables	3,261	2,284	3,261	2,284
Other financial assets	-	149	-	149
Infrastructure, plant and equipment	2,908	3,280	2,908	3,280
Intangibles	1,427	1,935	1,427	1,935
Other non-financial assets	51	88	51	88
<b>Total</b>	<b>8,762</b>	<b>8,538</b>	<b>8,762</b>	<b>8,538</b>
<b>Liabilities</b>				
Suppliers	819	681	819	681
Lease incentives	1,695	1,936	1,695	1,936
Employee provisions	2,243	2,272	2,243	2,272
Other provisions and payables	1,328	837	1,328	837
<b>Total</b>	<b>6,085</b>	<b>5,726</b>	<b>6,085</b>	<b>5,726</b>

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 on page 163 of this Annual Report.

**Office of the Australian Information Commissioner**  
**Notes to and forming part of the financial statements**  
for the period ended 30 June 2014

**Note 20: Net Cash Appropriation Arrangements**

	2014 \$'000	2013 \$'000
<b>Total comprehensive income (loss) less depreciation/amortisation expenses</b>		
<b>previously funded through revenue appropriations<sup>1</sup></b>	<b>811</b>	287
Plus: depreciation/amortisation expenses previously funded through revenue appropriation		
	<b>(966)</b>	(865)
<b>Total comprehensive loss per the Statement of Comprehensive Income</b>	<b>(155)</b>	(578)

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.



## Appendix Three — 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/about-us/our-information-publication-scheme](http://www.oaic.gov.au/about-us/our-information-publication-scheme).



## Appendix Four — Agencies subject to the FOI Act as at 30 June 2014

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 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 Norfolk Island 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** Agencies covered by the FOI Act and those that are excluded

FOI Act agencies	Exceptions
<p><b>Departments of State</b></p> <p>All Departments of State (eg the Department of Foreign Affairs and Trade, and the Department of Health) 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><b>Bodies established by the Commonwealth for a public purpose</b></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"> <li>• incorporated companies or associations</li> <li>• Royal Commissions</li> <li>• 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>, and</li> <li>• the legislature of the NT, ACT or Norfolk Island</li> <li>• 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).</li> </ul>

FOI Act agencies	Exceptions
<p><b>Holders of an office established for a public purpose</b></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"> <li>• members of the legislature of the NT, ACT or Norfolk Island</li> <li>• ministers of the NT or ACT or Administrator or Deputy Administrator of Norfolk Island</li> <li>• a holder of an office established under s 12 of the <i>Norfolk Island Act 1979</i></li> <li>• an office performing duties as part of employment by a department or a prescribed authority</li> <li>• an office excluded by Regulations</li> <li>• an office of a member of a body</li> <li>• an office established for the purposes of a prescribed authority.</li> </ul>
<p><b>Courts</b></p> <p>Courts are deemed to be prescribed authorities, and subject to the FOI Act in respect of administrative matters.</p>	<p>The FOI Act does not apply to certain documents of the Federal Court, the Family Court and the Federal Circuit Court of Australia about complaint handling.</p>
<p><b>Prescribed bodies</b></p> <p>These bodies are listed in Schedule 1 to the <i>Freedom of Information (Miscellaneous Provisions) Regulations 1982</i>. As at 30 June 2014 the only body listed under the regulations was Aboriginal Hostels Limited.</p>	
<p><b>Prescribed office holder</b></p> <p>As at 30 June 2014 there were no prescribed office holders.</p>	
<p><b>National Broadband Network (NBN Co)</b></p> <p>NBN Co is listed in paragraph (aa) of the definition of prescribed authority in s 4(1) of the FOI Act.</p>	

## **Agriculture**

Australian Fisheries Management Authority  
Australian Pesticides and Veterinary Medicines Authority  
Cotton Research and Development Corporation  
Department of Agriculture  
Fisheries Research and Development Corporation  
Grains Research and Development Corporation  
Grape and Wine Research and Development Corporation  
Minister for Agriculture  
National Rural Advisory Council  
Parliamentary Secretary to the Minister for Agriculture  
Rural Industries Research and Development Corporation  
Wine Australia Corporation

## **Attorney-General's**

Administrative Appeals Tribunal  
Administrative Review Council  
Admiralty Rules Committee  
Attorney-General  
Attorney-General's Department  
Australia Council for the Arts  
Australian Commission for Law Enforcement Integrity  
Australian Crime Commission  
Australian Federal Police  
Australian Film, Television and Radio School  
Australian Financial Security Authority  
Australian Human Rights Commission  
Australian Institute of Criminology  
Australian Law Reform Commission  
Australian National Maritime Museum  
Australian Transaction Reports and Analysis Centre  
Classification Board  
Classification Review Board  
Copyright Tribunal of Australia  
CrimTrac  
Defence Force Discipline Appeal Tribunal  
Family Court of Australia

Family Law Council  
Federal Circuit Court of Australia  
Federal Court of Australia  
Film Certification Advisory Board  
High Court of Australia  
Minister for Justice  
Minister for the Arts  
Museum of Australian Democracy  
National Archives of Australia  
National Film and Sound Archive of Australia  
National Gallery of Australia  
National Library of Australia  
National Museum of Australia  
National Native Title Tribunal  
National Portrait Gallery of Australia  
Office of Parliamentary Counsel  
Office of the Australian Information Commissioner  
Office of the Commonwealth Director of Public Prosecutions  
Public Lending Right Committee  
Screen Australia  
Solicitor-General

## **Communications**

Australian Broadcasting Corporation  
Australian Communications and Media Authority  
Australian Postal Corporation  
Department of Communications  
Minister for Communications  
NBN Co Ltd  
Parliamentary Secretary to the Minister for Communications  
Special Broadcasting Service Corporation  
Telecommunications Universal Service Management Agency

## **Defence**

Army and Air Force Canteen Service  
Assistant Minister for Defence  
Australian Defence Human Research Ethics Committee  
Australian Military Forces Relief Trust Fund  
Australian War Memorial  
Defence Families of Australia  
Defence Housing Australia  
Defence Reserves Support Council  
Department of Defence  
Department of Veterans' Affairs  
Military Rehabilitation and Compensation Commission  
Minister Assisting the Prime Minister on the Centenary of ANZAC  
Minister for Defence  
Minister for Veterans' Affairs  
Parliamentary Secretary to the Minister for Defence  
Repatriation Commission  
Repatriation Medical Authority  
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  
Specialist Medical Review Council  
Veterans' Review Board

## **Education**

Assistant Minister for Education  
Australian Curriculum, Assessment and Reporting Authority  
Australian Institute of Aboriginal and Torres Strait Island Studies  
Australian National University  
Australian Research Council  
Department of Education  
Minister for Education  
Parliamentary Secretary to the Minister for Education  
Tertiary Education Quality and Standards Agency

## Employment

Asbestos Safety and Eradication Agency  
Assistant Minister for Employment  
Coal Mining Industry (Long Service Leave Funding) Corporation  
Comcare  
Department of Employment  
Fair Work Commission  
Fair Work Ombudsman  
Minister for Employment  
Office of the Fair Work Building Industry Inspectorate  
Road Safety Remuneration Tribunal  
Safe Work Australia  
Safety, Rehabilitation and Compensation Commission  
Seafarers Safety, Rehabilitation and Compensation Authority  
Workplace Gender Equality Agency

## Environment

Australian Heritage Council  
Bureau of Meteorology  
Clean Energy Regulator  
Climate Change Authority  
Commonwealth Environmental Water Holder  
Department of the Environment  
Director of National Parks  
Great Barrier Reef Marine Park Authority  
Minister for the Environment  
Murray-Darling Basin Authority  
National Environment Protection Council  
National Environment Protection Council Service Corporation  
National Water Commission  
Parliamentary Secretary to the Minister for the Environment  
Sydney Harbour Federation Trust  
Water Efficiency Labelling and Standards Regulator

## **Finance**

Albury-Wodonga Corporation  
Australasian Procurement and Construction Council Inc  
Australian Electoral Commission  
Australian Political Exchange Council  
Commonwealth Superannuation Corporation  
ComSuper  
Department of Finance  
Future Fund Management Agency  
Minister for Finance  
Parliamentary Retiring Allowances Trust  
Parliamentary Secretary to the Minister for Finance  
Secretaries' ICT Governance Board  
Special Minister of State

## **Foreign Affairs and Trade**

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 Investment  
Parliamentary Secretary to the Minister for Foreign Affairs  
Tourism Australia

## **Health**

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  
Assistant Minister for Health

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  
Australian Sports Anti-Doping Authority  
Australian Sports Commission  
Cancer Australia  
Complaints Resolution Panel (Therapeutic Goods Advertising)  
Department of Health  
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  
Minister for Sport  
National Blood Authority  
National Health and Medical Research Council  
National Health Performance Authority  
National Industrial Chemicals Notification and Assessment Scheme  
National Mental Health Commission  
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



Sport and Recreation Ministers' Council  
Therapeutic Goods Advertising Codes Council  
Therapeutic Goods Committee

## **Immigration and Border Protection**

Assistant Minister for Immigration and Border Protection  
Australian Customs and Border Protection Service  
Department of Immigration and Border Protection  
Migration Review Tribunal  
Minister for Immigration and Border Protection  
Refugee Review Tribunal

## **Industry**

Australian Institute of Marine Science  
Australian Nuclear Science and Technology Organisation  
Australian Renewable Energy Agency  
Australian Skills Quality Authority  
Committees established under *Tradesmen's Rights Regulation Act 1946*  
Commonwealth Scientific and Industrial Research Organisation  
Department of Industry  
Designs Office  
Geoscience Australia  
Minister for Industry  
National Offshore Petroleum Safety and Environmental Management Authority  
Offshore Minerals Joint Authority  
Parliamentary Secretary to the Minister for Industry  
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 Education Investment Fund Advisory Board  
Trade Marks Office

## **Infrastructure and Regional Development**

Airservices Australia

Assistant Minister for Infrastructure and Regional Development

Australian Maritime Safety Authority

Australian Transport Safety Bureau

Civil Aviation Safety Authority

Department of Infrastructure and Regional Development

Infrastructure Australia

International Air Services Commission

Minister for Infrastructure and Regional Development

National Capital Authority

National Transport Commission

## **Prime Minister and Cabinet**

Aboriginal Benefit Account Advisory Committee

Aboriginal Hostels Limited

Australian Public Service Commission

Commonwealth Ombudsman

Coordinator General for Remote Indigenous Services

Defence Force Remuneration Tribunal

Department of the Prime Minister and Cabinet

Executive Director of Township Leasing

Independent National Security Legislation Monitor

Indigenous Business Australia

Indigenous Land Corporation

Merit Protection Commissioner

Minister Assisting the Prime Minister for the Public Service

Minister Assisting the Prime Minister for Women

Minister for Indigenous Affairs

Office of the Official Secretary to the Governor-General

Office of the Registrar of Indigenous Corporations

Parliamentary Secretary to the Prime Minister

Prime Minister

Remuneration Tribunal

Torres Strait Regional Authority

Wreck Bay Aboriginal Community Council

## **Social Services**

Assistant Minister for Social Services  
Australian Hearing  
Australian Institute of Family Studies  
Department of Human Services  
Department of Social Services  
Minister for Human Services  
Minister for Social Services  
National Disability Insurance Agency  
Office of the Aged Care Commissioner  
Parliamentary Secretary to the Minister for Social Services  
Social Security Appeals Tribunal

## **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 Regulation Authority  
Australian Reinsurance Pool Corporation  
Australian Securities and Investments Commission  
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 Small Business  
National Competition Council

Parliamentary Secretary to the Treasurer

Productivity Commission

Reserve Bank of Australia

Superannuation Complaints Tribunal

Takeovers Panel

Tax Practitioners Board

Treasurer

## **Norfolk Island (an external territory)**

Administration of Norfolk Island



## Appendix Five — Memorandums of Understanding

### **Australian Human Rights Commission**

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 \$1,963,992 for these services in 2013–14. The OAIC also sub-let premises in Sydney from the AHRC under this arrangement.

### **ACT Government Department of Justice and Community Safety**

The OAIC renewed an MOU with the ACT Government Department of Justice and Community Safety until 30 June 2014. 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. In 2013–14, the OAIC received \$93,050 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 2013–14. The OAIC received \$372,976 (including GST) from Centrelink to support the costs of monitoring the conduct of the data-matching program.

### **Australian Customs and Border Protection Service**

The OAIC has held an agreement with the Australian Customs and Border Protection Service (ACBPS) since May 2008. The OAIC provides ongoing privacy advice as well as two audits a year of various aspects of ACBPS' use of Passenger Name Record data. The OAIC invoiced ACBPS for \$60,000 (including GST) in 2013–14 to support the costs of this work. This MOU was renewed in January 2013 and supersedes the MOU that was in place since 2008.

## Department of Human Services — 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 was 1 July 2013 to 30 June 2014. Previously, these matters were dealt with under two separate MOUs. The OAIC received \$363,000 from the Department of Human Services in 2013–14.

## Department of Health — Healthcare Identifiers and Personally Controlled Electronic Health Records

The OAIC held an MOU with the Department of Health to deliver an independent regulatory service in relation to the handling of Healthcare Identifiers (HI) and the operation of the HI Service as provided by the *Privacy Act 1988* (Privacy Act) and the *Healthcare Identifiers Act 2010*. 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 (PCEHR system) as provided by the Privacy Act and *Personally Controlled Electronic Health Records Act 2012*.

The OAIC received \$509,898 for oversight of the HI Service and \$1,294,818 for oversight of the PCEHR system in 2013–14.

## Department of Industry

The OAIC held an agreement with the Department of Industry (Industry) to provide dedicated privacy-related services, including the OAIC's appointment as independent privacy regulator of the Student Identifier Scheme. The OAIC received \$41,750 from Industry for the provision of services in 2013–14.

## Department of Finance

The OAIC held an MOU with the Department of Finance for hosting the OAIC Blog on the Govspace website. The MOU commenced on 1 July 2012 and continues until terminated.

The OAIC paid \$4500 for these services in 2013–14.



## Appendix Six — Speeches and presentations by Commissioners

This Appendix lists the speeches and presentations given by the Commissioners during 2013–14.

### **Prof. John McMillan — Australian Information Commissioner**

#### July 2013

- presentation to the 2013 Australian Institute of Administrative Law National Administrative Law Forum, Canberra
- presentation to the Freedom of Information (FOI) Accredited Decision Maker Forum, Department of Defence, Canberra
- presentation to the Connected Government Summit, Canberra
- presentation to Norton Rose/McAfee privacy law reform seminar, Canberra

#### August 2013

- presentation to the Security in Government Conference, Canberra

#### September 2013

- presentation to the Australian Curriculum, Assessment and Reporting Authority Board, Sydney
- presentation to the Records and Information Management Professionals InForum Convention, Canberra
- presentation to the International Conference of Data Protection and Privacy Commissioners, Poland

#### October 2013

- presentation to the Australasian Study of Parliament Group Annual Conference, Perth
- Master of Ceremonies for the Community Attitudes to Privacy survey launch, Sydney
- presentation to the Clayton Utz Government In-House Counsel Continuous Legal Education Day, Sydney
- presentation to Department of Social Services Senior Management group, Canberra
- lecture to the Australian National University (ANU) military law course, Canberra
- lecture to the University of Canberra on the role of the Ombudsman, Canberra

## November 2013

- presentation to the NSW Open Data Forum, Sydney
- presentation to ANU Public Law Weekend on FOI trends, Canberra
- presentation to Moore Stephens privacy law reform seminar, Melbourne
- presentation to the Australian Public Sector Anti-Corruption Conference 2013 on whistleblower protection, Sydney

## December 2013

- participation in a panel session at FutureGov Summit, Canberra

## February 2014

- presentation to the Clayton Utz Government In-House Counsel Continuous Legal Education day, Sydney
- presentation to the 5th Annual National Records Information Officers' Forum 2014, Melbourne
- lecture on administrative law at the University of Canberra, Canberra
- presentation to the Australian Government Solicitor Freedom of Information and Privacy Forum 2014, Canberra

## March 2014

- lecture on privacy and technology at the ANU, Canberra

## April 2014

- presentation to the Office of the Australian Information Commissioner Senior Executive Service (SES) seminar on privacy law reform, Canberra
- presentation to the Data Management and Sharing in Government conference, Canberra
- presentation to the Law Council of Australia Privacy Committee, Sydney
- presentation to the Department of Defence (DOD) 2014 Access to Information Forum, Canberra
- presentation to the Australian and New Zealand Ombudsman Association conference, New Zealand

## May 2014

- Master of Ceremonies for Privacy Awareness Week (PAW) launch breakfast, Sydney
- participation in the International Association of Privacy Professionals Australia & New Zealand (iappANZ) and Gilbert + Tobin PAW breakfast debate, Sydney
- presentation to the HP Information Governance Forum, Sydney
- presentation to the eGovernment CeBIT conference, Sydney



- presentation to the Department of Human Services PAW event, Canberra
- presentation to the Australian Bureau of Statistics PAW event, Canberra
- presentation to the National Archives Advisory Council meeting, Canberra
- presentation to the Measuring Health Outcomes conference, Melbourne
- presentation to the Information Awareness Month conference, Canberra
- participation in the launch of the Bureau of Meteorology’s Data and Information Framework Principles, Canberra

#### June 2014

- presentation to IDEAS Seminar at National Archives of Australia, Canberra

### **Timothy Pilgrim — Privacy Commissioner**

#### July 2013

- presentation to the iappANZ ‘Feeling secure?’ Privacy and information security workshop, Sydney
- presentation as part of a privacy panel on ‘the enforcement toolbox’ at the Asia-Pacific Economic Cooperation Privacy Enforcement Workshop, New Zealand

#### August 2013

- presentation to the Australian Public Service Commission SES forum, Canberra
- presentation to the Joint Review of implementation of the EU-Australia Passenger Name Record Agreement, Canberra

#### September 2013

- presentation to the iappANZ ‘Data Inflight — the ins and outs of offshore outsourcing workshop’, Sydney

#### October 2013

- presentation to the Community Attitudes to Privacy survey launch, Sydney
- presentation to the ‘Data, Privacy and Ethics — A UTS Conversation’ event, the University of Technology, Sydney alumni and senior staff, Sydney

#### November 2013

- presentation to the ANU Public Law Weekend, Canberra
- presentation to the iappANZ ‘Privacy Unbound’ Summit, Sydney
- presentation to the Henry Davis York Community Attitudes to Privacy survey briefing, Sydney

## December 2013

- presentation at the Allens Privacy reforms: Q&A session, Sydney & Melbourne

## February 2014

- presentation to the International HR Directors CEO forum, Sydney
- presentation to the iappANZ privacy wrap up training workshop, Sydney

## March 2014

- presentation to the Australian Competition and Consumer Commission National Consumer Congress, Sydney
- presentation to the Australian Retail Credit Association meeting, Sydney
- presentation to the Association of Market and Social Research Organisations Leaders Forum, Sydney
- presentation to the SES Ethics Advisory Group, Canberra

## April 2014

- presentation as part of a panel at the Association for Data-driven Marketing and Advertising Data Day event, Sydney
- presentation to the Law Council of Australia Privacy Committee, Sydney
- presentation at the Communications Alliance event in partnership with Baker and McKenzie, Sydney

## May 2014

- presentation at the PAW launch breakfast, Sydney
- presentation at the Intel Security and Norton Rose Executive Roundtable, Sydney
- presentation to the Sensor Society Conference, University of Queensland, Brisbane
- presentation at the iappANZ and Commonwealth Bank of Australia 'Data breach — where are your vulnerabilities and are you ready?' event, Sydney
- presentation at 'Privacy Matters' public lecture, Griffith University, Brisbane
- presentation at iappANZ and McAfee PAW event, Brisbane
- presentation at the Ernst & Young PAW lunch, Melbourne
- presentation to the Australian Regulatory Summit, Sydney
- presentation to the Society of Consumer Affairs Professionals Symposium, Sydney

## June 2014

- presentation to the Data Governance Council, for the Department of Health, Canberra

## **James Popple — FOI Commissioner**

### July 2013

- presentation to the Department of Regional Australia, Local Government, Arts and Sport

### October 2013

- presentation to the Annual Conference of the Australian Society of Archivists, Canberra

### April 2014

- presentation to the DOD Access to Information Forum, Canberra

### May 2014

- presentation at the Administrative Appeals Tribunal members' professional development sessions, Brisbane and Sydney

### June 2014

- lecture for the ANU administrative law course, Canberra

## Appendix Seven — 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 2014 the members were:

- Professor John McMillan AO, 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
- Ms Jill Lang, Consultant
- Mr Peter Lewis, Rural & Regional Network Reporter, ABC News Australia
- Ms Su McCluskey, Chief Executive Officer, Regional Australia Institute
- Ms Roxanne Missingham, University Librarian Chief Scholarly Information Officer, Australian National University
- Mr Alan Noble, Engineering Director, Google Australia
- Ms Kirstie Parker, Co-Chair, National Congress of Australia's First Peoples
- Mr Edward Santow, Chief Executive Officer, Public Interest Advocacy Centre
- Mr Michael Simpson, General Manager New South Wales, ACT, Vision Australia.

The Freedom of Information Commissioner and Privacy Commissioner participate in IAC meetings as observers.

*Note:* Ms Elizabeth Kelly, Deputy Secretary, Attorney-General's Department, resigned from the IAC on 3 October 2013.

## Privacy Advisory Committee

The Privacy Advisory Committee (PAC) is established by the *Privacy Act 1988* (s 82). Members (other than the Chair and Privacy Commissioner) 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 2014 the members were:

- Professor John McMillan AO, Australian Information Commissioner (Committee Chair)
- Mr Timothy Pilgrim, Privacy Commissioner
- Professor Michael Kidd AM, Executive Dean, Faculty of Medicine, Nursing and Health Sciences, Flinders University
- Ms Barbara Robertson, Chief Privacy Officer and Head of Governance, National Australia Bank.

*Note:* Mr Richard Glenn, Assistant Secretary, Business and Information Law Branch, Attorney-General's Department, resigned from the PAC on 23 August 2013. The appointments of Dr Christine O'Keefe, Program Leader for Decision and User Science in CSIRO Computational Informatics, CSIRO; Associate Professor Moira Paterson, Faculty of Law, Monash University; and Mr Leon Carter, National Secretary, Financial Sector Union, expired on 7 December 2013.

## Appendix Eight — Acronyms

AAT	Administrative Appeals Tribunal
ACBPS	Australian Customs and Border Protection Service
ACT	Australian Capital Territory
ADMA	Association for Data-driven Marketing and Advertising
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
ANU	Australian National University
APEC	Asia-Pacific Economic Cooperation
APPA	Asia Pacific Privacy Authorities
APP	Australian Privacy Principle
APS	Australian Public Service
AO	Officer of the Order of Australia
APSC	Australian Public Service Commission
ARCA	Australian Retail Credit Association
ASIC	Australian Securities and Investment Commission
ATO	Australian Taxation Office
AusGOAL	Australian Governments Open Access and Licensing Framework
AustLII	Australasian Legal Information Institute
AUSTRAC	Australian Transaction Reports and Analysis Centre
CASA	Civil Aviation Safety Authority
CBPR	Cross-border Privacy Rules
CDD	Customer due diligence
CEO	Chief Executive Officer
CII	Commissioner initiated investigation
CJCIOC	Cross-Jurisdictional Chief Information Officers' Committee
CPEA	Cross-border Privacy Enforcement Arrangement
CRB	Credit Reporting Body

CR	Credit Reporting
CRG	Commonwealth Reference Group on Identity Security
CSIRO	Commonwealth Scientific and Industrial Research Organisation
DBN	Data breach notification
DEEWR	Department of Education, Employment and Workplace Relations
DFAT	Department of Foreign Affairs and Trade
DHS	Department of Human Services
DIBP	Department of Immigration and Border Protection
DVA	Department of Veterans' Affairs
DVS	Document Verification Service
EDR	External dispute resolution
EL	Executive Level
ESD	Ecologically Sustainable Development
EOI	Evidence of Identity
EU	European Union
FOI	Freedom of information
FRLI	Federal Register of Legislative Instruments
FTE	Full-Time Equivalent
FWC	Fair Work Commission
GPEN	Global Privacy Enforcement Network
HI	Healthcare Identifiers
HPI-I	Healthcare Provider Identifiers — Individual
IAC	Information Advisory Committee
iappANZ	International Association of Privacy Professionals Australia & New Zealand
ICDPPC	International Conference of Data Protection and Privacy Commissioners
ICON	Information Contact Officer Network
IMT	International Money Transfer
IPP	Information Privacy Principle
IPS	Information Publication Scheme
JACS	ACT Justice and Community Safety Directorate
MOU	Memorandum of Understanding
MRT	Migration Review Tribunal
NBIF	National Biometric Interoperability Framework
NHMRC	National Health and Medical Research Council
NISS	National Identity Security Strategy
NISCG	National Identity Security Coordination Group
NPP	National Privacy Principle
OAIC	Office of the Australian Information Commissioner

OECD	Organisation for Economic Cooperation 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 the Prime Minister and Cabinet
PNR	Passenger Name Record
PSI	Public sector information
RRT	Refugee Review Tribunal
SES	Senior Executive Service
TAP	Talking about performance
TFN	Tax File Number
TPPs	Territory Privacy Principles
UTS	University of Technology, Sydney
WCAG	Web Content Accessibility Guidelines
WSML	Western Sydney Medicare Local
WHS	Workplace Health and Safety



# Appendix Nine — List of requirements

## General requirements

**Table A9.1** General requirements

Description	Requirement	Part of report
Letter of transmittal	Mandatory	Preliminary pages
Table of contents	Mandatory	Preliminary pages
Index	Mandatory	Index
Glossary	Mandatory	Appendix Eight
Contact officer(s)	Mandatory	Preliminary pages
Internet home page address and internet address for report	Mandatory	Preliminary pages

**Table A9.2** Review by Australian Information Commissioner

Description	Requirement	Part of report
Review by Australian Information Commissioner	Mandatory	Chapter One
Summary of significant issues and developments	Suggested	Chapter One
Overview of OAIC's performance and financial results	Suggested	Chapters One & Two, Appendix One & Two
Outlook for following year	Suggested	Chapter One

**Table A9.3** Office of the Australian Information Commissioner overview

Description	Requirement	Part of report
Role and functions	Mandatory	Chapter Two
Organisational structure	Mandatory	Chapter Two
Outcome and programme structure	Mandatory	Chapter Two
Where outcome and programme 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

**Table A9.4** Report on performance

Description	Requirement	Part of report
Review of performance during the year in relation to programmes and contribution to outcomes	Mandatory	Chapter Two, Appendix One
Actual performance in relation to deliverables and KPIs set out in PB Statements/PAES or other portfolio statements	Mandatory	Chapter Two
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 One & Two, Appendix One & Two
Trend information	Mandatory	Chapters One & Two, and Five to Nine
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 One
Contribution of risk management in achieving objectives	Suggested	Chapter Three
Performance against service charter customer service standards, complaints data, and the OAIC's response to complaints	If applicable, mandatory	Chapter Two, Seven & Eight
Discussion and analysis of the OAIC's financial performance	Mandatory	Chapter One
Discussion of any significant changes in financial results from the prior year, from budget or anticipated to have a significant impact on future operations	Mandatory	Not applicable
Agency resource statement and summary resource tables by outcomes	Mandatory	Appendix One

**Table A9.5** Other mandatory information

Description	Requirement	Part of report
Work health and safety (Schedule 2, Part 4 of the <i>Work Health and Safety Act 2011</i> )	Mandatory	Chapter Three
Advertising and Market Research (Section 311A of the <i>Commonwealth Electoral Act 1918</i> ) and statement on advertising campaigns	Mandatory	Chapter Three
Ecologically sustainable development and environmental performance (Section 516A of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> )	Mandatory	Chapter Three
Compliance with the agency's obligations under the <i>Carer Recognition Act 2010</i>	If applicable, mandatory	Not applicable
Grant programmes	Mandatory	Chapter Three
Disability reporting — explicit and transparent reference to agency-level information available through other reporting mechanisms	Mandatory	Chapter Three
Information Publication Scheme statement	Mandatory	Appendix Three
Correction of material errors in previous annual report	If applicable, mandatory	Not applicable
Agency Resource Statements and Resources for Outcomes	Mandatory	Appendix One & Two
List of requirements	Mandatory	Appendix Nine

## Management and Accountability

**Table A9.6** Corporate governance

Description	Requirement	Part of report
Agency heads are required to certify that their agency complies with the 'Commonwealth Fraud Control Guidelines'	Mandatory	Letter of transmittal
Statement of the main corporate governance practices in place	Mandatory	Chapter Three
Names of the senior executive and their responsibilities	Suggested	Chapter Two
Senior management committees and their roles	Suggested	Chapter Three
Corporate and operational plans and associated performance reporting and review	Suggested	Chapter Three
Internal audit arrangements including approach adopted to identifying areas of significant financial or operational risk and arrangements to those risks	Suggested	Chapter Three

Description	Requirement	Part of report
Policy and practices on the establishment and maintenance of appropriate ethical standards	Suggested	Chapter Three
How nature and amount of remuneration for SES officers is determined	Suggested	Chapter Three

**Table A9.7** External scrutiny

Description	Requirement	Part of report
Significant developments in external scrutiny	Mandatory	Chapter Three
Judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner	Mandatory	Chapter Three
Reports by the Auditor-General, a Parliamentary Committee, the Commonwealth Ombudsman or an agency capability review	Mandatory	Chapter Three

**Table A9.8** Management of human resources

Description	Requirement	Part of report
Assessment of effectiveness in managing and developing human resources to achieve departmental objectives	Mandatory	Chapter Three
Workforce planning, staff turnover and retention	Suggested	Chapter Three
Impact and features of enterprise or collective agreements, individual flexibility arrangements (IFAs), determinations, common law contracts and Australian Workplace Agreements (AWAs)	Suggested	Chapter Three
Training and development undertaken and its impact	Suggested	Chapter Three
Work health and safety performance	Suggested	Chapter Three
Productivity gains	Suggested	Chapter Three
Statistics on staffing	Mandatory	Chapter Three
Enterprise or collective agreements, IFAs, determinations, common law contracts and AWAs	Mandatory	Chapter Three
Performance pay	Mandatory	Chapter Three

**Table A9.9** Assets management

Description	Requirement	Part of report
Assessment of effectiveness of assets management	If applicable, mandatory	Not applicable

**Table A9.10** Purchasing

Description	Requirement	Part of report
Assessment of purchasing against core policies and principles	Mandatory	Chapter Three

**Table A9.11** Consultants

Description	Requirement	Part of report
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 Three

**Table A9.12** Australian National Audit Office access clauses

Description	Requirement	Part of report
Absence of provisions in contracts allowing access by the Auditor-General	Mandatory	Chapter Three

**Table A9.13** Exempt contracts

Description	Requirement	Part of report
Contracts exempted from publication in AusTender	Mandatory	Chapter Three

**Table A9.14** Financial statements

Description	Requirement	Part of report
Financial statements	Mandatory	Appendix One & Two

# Index

## A

- about this report vi
- access to information *see also* freedom of information
  - number of FOI requests xiii, 126–31
  - open access to government 47–8
  - proactive release and administrative access 48–9
  - requests xiii
  - types of FOI requests 126
- accountability *see also* management
  - advertising and market research 26
  - ANAO access clauses 26
  - consultants 26
  - contracts, exempt 26
  - corporate governance 20–2
  - disability reporting 25
  - list of requirements 224–8
  - overview 20
  - purchasing 25
- acronyms 221–3
- Administrative Appeals Tribunal (AAT)
  - FOI decisions, reviewing xiii, 148–51
- Administrative Review Council 37
- advertising 26
- advice
  - Australian Government 64–66, 121–123
  - ACT agencies, to 66
  - cross-government forums 68–9
  - government agencies, to 64–6
  - other jurisdictions 69–70
  - private sector 66–8
  - small business credit reporting 67
- agencies
  - ACT agencies 66
  - advice to 64–6, 121–123
  - Agency resources 38–39, 122–3, 152–7
  - FOI actions, complaints about 151
  - FOI assistance for 121–3
  - FOI guidelines 122
  - number of FOI requests 126–30
  - subject to FOI Act 200–11
- agriculture
  - agencies subject to FOI Act 202
- anti-money laundering
  - advice to government agencies 64, 68
- appeals 148–151
  - Federal Circuit Court of Australia 151
  - High Court of Australia 151
- Asia-Pacific Economic Cooperation (APEC) 37, 69
  - Cross-border Privacy Enforcement Arrangement 69
  - Data Privacy Pathfinder 37
- Asia Pacific Privacy Authorities (APPA) 36
  - Forum meetings 36, 69
- assessments 97–103
- Association of Information Access Commissioners (AIAC) 35–6
- Attorney-General’s Department (AGD)
  - agencies subject to FOI Act 202–3
  - Audit Committee 20
  - OAIC functions, assuming 8, 12
- Audit Committee 20
- audits 97–103
  - ACT government 99
  - assessments 97–103
  - Customs and Border Protection Service (ACBPS) 100
  - eHealth 101–3
  - internal security 99–100
- AUSTRAC Privacy Consultative Committee 68
- ACT Government Department of Justice and Community Safety
  - memorandum of understanding 212
- Australian Customs and Border Protection Service (ACBPS) 100
  - memorandum of understanding 212
- Australian Government Open Access and Licensing (AusGOAL) Framework 6, 53
- Australian Human Rights Commission (AHRC) 20
  - memorandum of understanding 212
- Australian Information Commission Act 2010* (AIC Act) vi, xvi, 12, 21, 41, 219
  - Hawke Review xvii, 124
- Australian Information Commissioner 8, 13
  - enhanced privacy powers 59–60
  - message ix–xii

- Australian Law Reform Commission
    - review of copyright 124
  - Australian National Audit Office (ANAO)
    - access clauses 26
  - Australian Privacy Principles (APPs) 58, 59
    - complaints 83
    - nature and purpose 59
    - telephone enquiries relating to 78
  - Australian Privacy Principles guidelines* (APP Guidelines) xviii, 59
  - Australian Public Service (APS)
    - Values and Code of Conduct 21
  - Australian Public Service Big Data Strategy* (2013) xii, 5, 50, 51
  - Australian Taxation Office
    - data-matching 96–7
- B**
- Berlin Declaration on Strengthening Transparency at the National and International Level 35
  - Better Practice Guide: Public Sector Governance* (2014) xii
  - Big Data Principles xii, 51
  - Big Data Strategy Working Group 6, 51, 64
- C**
- Centrelink
    - memorandum of understanding 212
  - codes 61–2
    - APP 61
    - complaints made under 90
    - credit reporting *see* credit reporting
    - developing, guidelines for 61
    - telephone enquiries relating to 79
  - Comcare
    - data-matching 97
  - committees 41
    - Information Advisory Committee (IAC) 41, 219
    - members 219–20
    - Privacy Advisory Committee (PAC) 41, 220
  - Commonwealth Ombudsman 21
    - complaints about agency FOI actions 151
    - OAIC functions, assuming 8
  - communication and engagement 30–41
    - external networks 40–1
    - information policy 53–4
    - international and regional 34–7
    - media 38
    - OAIC achievements xxiii
    - overview 30
    - Privacy Awareness Week 2014 33–4
    - privacy law reform 33
    - publications 38–9
    - social media 39–40
    - speeches 38
    - website 9, 39
  - communications
    - agencies subject to FOI Act 203
  - Community Attitudes to Privacy survey xviii–xix, 31–2
  - complaints 81–90
    - agency FOI actions, complaints about 151
    - FOI *see* freedom of information complaints
    - privacy 81–90
    - statistics ix, xvi, 76, 81–90, 113–17
  - conferences
    - 8th Annual International Conference of Information Commissioners 35
    - 35th International Conference of Data Protection and Privacy Commissioners 35
  - confidentiality
    - transparency and xi
  - consultants 26
  - contact officer viii
  - contracts
    - exempt 26
  - corporate engagement
    - OAIC achievements xxiii
  - corporate governance 20–2
  - Corporate Support and Communication Branch 14
  - counter-terrorism financing
    - advice to government agencies 64
  - credit reporting 60
    - advice to small business 67
    - complaints 83, 84
    - Credit Reporting Code xviii, 6, 60, 61, 71
    - Credit reporting: Know your rights* 6, 60
    - data-matching 96
    - disclosure of credit file (case study) 88
    - financial hardship laws, and 65

- Privacy (Credit Related Research) Rule 2014 62, 71–2*
  - telephone enquiries relating to 79
  - Crisp Revisited Reference Group 53
  - Cross-border Privacy Enforcement Arrangement (CBEA) 37
  - Cross-border Privacy Rules (CBPR) system 37
  - cross-government forums 68–9
  - Cross-Jurisdictional Chief Information Officers' Committee (CJCIOC) 6, 53
- D**
- data breach
    - notification (DBN) 93–4
    - telephone enquiries relating to 79
    - voluntary notifications xix
  - data-matching 94–7
    - Australian Taxation Office 96–7
    - Comcare 97
    - complaints 83
    - Department of Human Services 97
    - Guidelines on Data-Matching in Australian Government Administration* 95–6
    - inspections 95
    - monitoring government 94
    - statutory guidelines 94–5
    - telephone enquiries relating to 79
  - Data Privacy Pathfinder 37
  - Data Sharing Efficiency Working Group 6, 53
  - debt collection
    - complaints 84
  - decisions, review of ix, 110–13, 144–51
    - AAT, by 148–51
    - appeals 151
    - Information Commissioner, by 145–8
    - internal review 145
  - defence
    - agencies subject to FOI Act 204
  - de-identification 51–2
  - De-identification of data and information* xi, 5, 47
  - Department of Finance
    - memorandum of understanding 213
  - Department of Health 7
    - memorandum of understanding 7, 213
  - Department of Human Services
    - data-matching 97
    - memorandum of understanding 66, 213
  - Department of Industry
    - memorandum of understanding 213
  - determinations
    - FOI requests xiv
    - privacy 90–1
  - digital privacy
    - advice to government agencies 64
  - disability reporting 25
  - disclosure log 120–1, 143–4
  - dispute resolution *see* external dispute resolution
  - Dispute Resolution Branch 14
- E**
- ecological sustainable development 27
  - education
    - agencies subject to FOI Act 204
    - privacy law reform 33
  - eHealth 7, 21, 63
    - Northern Territory Department of Health database 70
    - privacy compliance assessments 101–3
  - 8th Annual International Conference of Information Commissioners 35
  - employees and employment *see* staff
  - employment
    - agencies subject to FOI Act 205
    - submissions 73
  - eNews alerts 40
  - Engage: Getting on with Government 2.0* 47
  - engagement *see* communication and engagement
  - environment
    - agencies subject to FOI Act 205
    - performance 27
  - ethical standards 21
  - Executive Committee 21–2
  - extensions of time 118–19
  - external dispute resolution (EDR) 60–1
    - guidelines for recognising schemes 61
    - membership of schemes 65
  - external scrutiny 21



**F**

Facebook 40, 67

Falk, Angelene 14, 15

Federal Circuit Court of Australia  
 appeals against FOI decisions 151

finance

agencies subject to FOI Act 206  
 complaints 84  
 disclosure by financial services company  
 (case study) 89  
 submissions 73

financial hardship

credit reporting laws and 65

financial performance 8

financial statements 164–98

foreign affairs and trade

agencies subject to FOI Act 206

free trade agreement

advice to governments on 70

freedom of information (FOI) 7–9

access to information *see* access to  
 information  
 agencies, assistance to 121–3, 126  
 agency resources, impact on 152–7  
 complaints *see* freedom of information  
 complaints  
 costs and charges xiv, 141–3, 152–7  
 decisions, review of ix, 110–13, 144–51  
 disclosure log 120–1, 143–4  
 enquiries, responding to 109–10  
 exemptions 135–7  
 guidelines 8  
 information policy and 50  
 Information Publication Scheme 120,  
 157–9, 199  
 internal review xiv, 145  
 investigations *see* investigations  
 non-labour costs 155, 158–9  
 OAIC, activity xiv–xv, xvi  
 OAIC achievements xxi–xxii  
 OAIC expenditure 159  
 personal information requests 130–1  
 personal records, amendment of 140–1  
 policy and compliance 108, 121, 124  
 public, assistance to 123  
 publications 38

requests *see* freedom of information  
 requests

staff costs 154–5, 158

statistics xiii–xiv, 108–24

timeliness and delays xiv, xvi

2010 reforms, effect xv

*Freedom of Information Act 1982* (FOI Act) vi,  
 x, xiii–xxi, 4–8, 12, 21, 41, 46–50, 108, 122,  
 126, 199, 200

amendment 124

commencement xiii

Hawke Review xvii, 124

releasing information 49

Freedom of Information Commissioner 8, 13

message xiii–xvii

speeches 218

freedom of information complaints 113–17

agencies actions, regarding 151

finalising 116

investigation recommendations 117–18

issues raised 115

respondent agencies with multiple  
 complaints 114

statistics 114–17

freedom of information requests

access to documents 126–40

amendment applications xiv

amendment of personal records 140–1

charges 141–3

costs 152–7

determination of xiv, 132–5

disclosure log 120–1, 143–4

extensions of time 118–19

timeliness of response xiv, 138–40

vexatious applicant declarations 119–20

**G**

Global Privacy Enforcement Network (GPEN)  
 37

Google

development of Google Glass 67

government agencies *see* agencies

government information

national resource, as 47

open access 47–8

grant programmes 26

*Guide to developing an APP privacy policy* 33  
 guide to the report vii  
*Guide to undertaking privacy impact assessments* (PIA guide) 33, 62  
*Guidelines for developing codes* 61

## H

health  
     agencies subject to FOI Act 206–8  
     submissions 73  
 Health Identifiers (HI) service 58, 63  
     privacy compliance assessments 101–3  
 health information  
     communication between general practitioners and patients 66  
     complaints 83, 84  
     eHealth *see* eHealth  
     guidelines 65  
     public reporting of payments to providers 67  
     telephone enquiries relating to 79  
 High Court of Australia  
     appeals against FOI decisions 151  
 human resources *see* staff

## I

immigration and border protection  
     agencies subject to FOI Act 208  
 industry  
     agencies subject to FOI Act 208  
 Information Advisory Committee (IAC) 41  
     committee members 219  
 Information Commissioner (IC) review  
     applications ix  
     complaints about agency FOI actions 151  
     decisions, publication of ix–x  
     FOI decisions 145–8  
     statistics xv  
 Information Contact Officer Network (ICON) 40  
 information policy 5–6  
     activities 51–4  
     develop and implement 46–54  
     engagement with stakeholders 53–4  
     FOI and 50  
     Information Advisory Committee (IAC) 41

    OAIC achievements xx  
     positions promoted 46–9  
     privacy and 50–1  
 Information Privacy Principles (IPPs) *see also*  
     Australian Privacy Principles (APPs)  
     complaints 83  
     telephone enquiries relating to 78  
 Information Publication Scheme 120, 199  
     agency resources, impact on 157–9  
 Information Sharing Guidelines  
     advice to SA Ombudsman 70  
 infrastructure and regional development  
     agencies subject to FOI Act 209  
 insurance  
     complaints 84  
 internal review  
     FOI decisions 145  
 international liaison 34–5, 70  
 international money transfers (IMT)  
     PIDs relating to 72  
 investigations  
     freedom of information 117–18  
     Information Commission initiated 91–2, 117  
     privacy 91–2

## L

legislative instruments 71–2  
 Leonard, Alison 14, 15  
 letter of transmittal iii  
 list of requirements 224–8

## M

McMillan, Professor John ix, 13, 14, 15  
     speeches 214–16  
 management *see also* accountability  
     advertising and market research 26  
     consultants 26  
     corporate governance 20–2  
     disability reporting 25  
     ecological sustainable development 27  
     environment performance 27  
     grant programmes 26  
     list of requirements 226–8  
     memorandums of understanding 26

overview 20  
 people 22–5  
 Market and Social Research Privacy Code 68  
 market research 26  
 media 38  
 memorandums of understanding 7, 26, 66,  
 212–13

## N

National Biometrics Interoperability  
 Framework Steering Committee 68  
 National Document Verification Service (DVS)  
 99  
 National Health and Medical Research Council  
 (NHMRC) 65  
 National Identity Security Coordination Group  
 68  
 National Identity Security Strategy (NISS) 99  
 National Privacy Principles (NPPs) *see also*  
 Australian Privacy Principles (APPs)  
 complaints 83  
 telephone enquiries relating to 79  
 national security  
 submissions 73  
 Norfolk Island 211  
 Northern Territory Department of Health  
 eHealth Record database 70

## O

Office of the Australian Information  
 Commissioner (OAIC)  
 achievements xxi–xxiii, 4–5  
 challenges 4–5  
 communication and engagement 30–41  
 disbanding ix, 8–9  
 establishment xiii  
 FOI activity xiv–xv, xvi  
 functions xiii, 4, 12  
 management and accountability 20–7  
 organisation structure 13–15  
 outcome and programme structure 15–18  
 outlook 8–9  
 overview 2013–14 ix–xii  
 performance 18  
 privacy enquiries xviii  
 programme deliverables 17  
 programme objectives 16

resource statement 162–3  
 role 12  
 website 9, 39  
 year in review 4

online services  
 complaints 84  
 submissions 74  
*Open data quick wins – getting the most out of  
 agency publications* xi, 5, 52  
 open government  
 nature and purpose 48  
 Open Government Partnership (OGP) 52–3  
*Open public sector information: From  
 principles to practice* (2013) xi  
*Open public sector information: Government in  
 transition* xi  
 Organisation for Economic Co-operation and  
 Development (OECD)  
 Global Privacy Enforcement Network  
 (GPEN) 37  
*Recommendation on Privacy Law  
 Enforcement Cooperation* (2007) 37  
 organisation structure 13–15

## P

performance  
 key performance indicators 18  
 staff performance management framework  
 22–3  
 personal information  
 FOI requests 130–1  
 management of x  
 personal records, amendment of 140–1  
 protection of 55  
*see* privacy  
 Personal Information Digest 103  
 Personally Controlled Electronic Health  
 Records (PCEHR) system xii, 7, 58, 63  
 privacy compliance assessments 101–3  
 Pilgrim, Timothy xii, xviii, 13, 14, 15  
 speeches 216–17  
 Pople, James xii, xiii, 13, 14, 15  
 speeches 218  
 Prime Minister and Cabinet  
 agencies subject to FOI Act 209  
*Principles on open public sector information*  
 (2011) xi, 47

- privacy 6–7
    - additional resources 62–3
    - advice to government agencies 64–6
    - codes 61–2, 79
    - complaints *see* privacy complaints
    - compliance 76–103
    - enquiries *see* privacy enquiries
    - external networks 40–1
    - information policy and 50–1
    - OAIC achievements xxii
    - public interest determinations *see* public interest determinations (PIDs)
    - publications 38–9
    - state and territory regulators, arrangement with 69
    - submission list 73–4
    - survey xviii–xix, 31–2
  - Privacy Act 1988* x, xviii–xix, xxii, 4–6, 8, 12, 14, 41, 47, 58–76, 82, 84–6, 90–5, 98, 101, 103, 122, 124, 213, 220
  - reform xviii, 21, 30, 33
  - Privacy Advisory Committee (PAC) 41
    - committee members 220
  - Privacy Authorities Australia (PAA) 36
  - Privacy Awareness Week (PAW) 2014 33–4
  - Privacy Commissioner 8, 13
    - enhanced powers 59–60
    - message xviii–xix
    - speeches 216–17
  - privacy complaints
    - case studies 88–9
    - closed 85–6
    - industries, organisations and agencies 84–5
    - nature of remedies achieved 87–8
    - privacy codes, under 90
    - reasons for closing 86–7
    - subject matter 82–3
    - types 81
  - Privacy (Credit Related Research) Rule 2014* 62, 71–2
  - Privacy (Credit Reporting) Code 2014* xviii, 6, 60, 61, 71–2
  - privacy enquiries
    - responding to 76–81
    - telephone 77–81
    - written 81
  - privacy law reform 33, 58–63
    - additional resources 62–3
    - submissions 73
    - telephone enquiries relating to 79
  - Privacy (Persons Reported as Missing) Rule 2014* 63, 71
  - privacy protection x
    - government and business response x
    - overview 58
  - Privacy public interest determination guide* 62
  - Productivity Commission *Annual Report 2012–13* (2013) xii
  - programme
    - deliverables 17
    - objectives 16
  - public
    - FOI assistance 123
  - public interest determinations (PIDs) 72
    - guide 62
    - international money transfers, relating to 72
    - review of existing 72
  - public relations
    - OAIC achievements xxiii
  - publications 38–9
  - purchasing 25
- ## Q
- Queensland government
    - privacy review 70
  - refusal of access to documents
    - practical refusal/request consultation process xiii
- ## R
- regional engagement 34–7
  - Regulation and Strategy Branch 14
  - Regulatory Action Policy xix
  - resource statement 162–3
  - retail
    - complaints 84
  - retention of information
    - case study 89
  - Review of the Personally Controlled Electronic Health Records (PCEHR)* (2013) xii

risk 22

role of OAIC 12

## S

scrutiny, external 21

Senior Executive Service (SES)

remuneration 22

social media 39–40

social services

agencies subject to FOI Act 210

South Australia

Ombudsman, advice to 70

speeches 38, 214–218

spent convictions

complaints 83

telephone enquiries relating to 79

staff

costs 154–5, 158

learning and development 23

numbers ix

people management 22–5

performance management 22–3

performance pay 24

profile 23–4

remuneration 22, 24

support 23

work health and safety 25

workplace diversity 24

statutory office holders

remuneration 22

strategic and business planning 21

## T

Talking about performance (TAP) framework  
22

tax file numbers

complaints 83

telephone enquiries relating to 79

taxation

data-matching 96–7

telecommunications 65

complaints 84

submissions 74

*Telecommunications Act 1997*

reforms to Part 13 65

35th International Conference of Data  
Protection and Privacy Commissioners 35

Toohy, Karen 14, 15

*Towards an Australian Government  
Information Policy* (2010) xi

*Towards Responsible Government* (2014) xii

transmittal, letter of iii

Trans-Pacific Partnership Free Trade  
Agreement 70

transparency x, xii

Berlin Declaration 35

confidentiality and xi

transport

submissions 73

treasury

agencies subject to FOI Act 210–11

Twitter 39

## U

*Understanding the value of public sector  
information in Australia* (2011) xi, 47

utilities

complaints 84

## V

vexatious applicant declarations 119–20

## W

website 9, 39

Whole-of-government Data Analytics Centre of  
Excellence Leadership Group 51

work health and safety 25

workplace diversity 24

## Y

YouTube 40

