

OAIC Senate Estimates opening statement –

October 23 2023

From:

Australian Information Commissioner and Privacy Commissioner, Angelene Falk

Thank you, Senators.

I am pleased to be joined by Acting Freedom of Information Commissioner Ms Toni Pirani.

ANNUAL REPORT

Our Annual Report tabled last week, demonstrates that the year was one of significant developments, notably that millions of Australians were impacted by the biggest data breaches the country had experienced since the commencement of the Notifiable Data Breaches (NDB) scheme.

Such events underscore the need for the OAIC as regulator to have the right foundations in place to promote and protect information access and privacy rights: robust laws, resources, capability and collaboration.

During the last financial year we further developed and advocated for these foundations to support a proportionate and proactive approach to regulation. In December last year the Privacy Act was amended to increase penalties for breaches and support our ability to work collaboratively with other regulators. Those reforms also amended FOI functions to allow Information Commissioner review decisions to be made by an SES delegate.

FOI

In relation to FOI, marking International Access to Information Day in September this year, Information Commissioners and Ombudsmen from across Australia released the findings of our study of community attitudes on access to government information. This is inline with Australia's commitments under the Open Government National Action Plans to better measure and understand the value citizens place on the right to access government information, and their experiences and outcomes when exercising that right.

91% of Australians believed that their right to access information from government sources was important. The majority of respondents successfully accessed the information they requested, with those who requested information from federal agencies having the highest success rate nationally of 85%.

Our annual report shows that in 2022-23 government agencies and Ministers received FOI applications consistent with the number received in the previous year, at 34,225.

In terms of applications to the OAIC for Information Commissioner review (IC review) of FOI decisions of agencies and ministers, they fell 16% to 1,647, a break in the significant increases of recent years, and FOI complaints fell 2% to 212. The reduction in applications for IC reviews is largely due to a 33% reduction in the number of IC reviews applications following a deemed decision of the Department of Home Affairs.

The OAIC finalised 1,519 IC reviews in 2022-23, an increase of 10% compared to 2021-22, which followed increases of 35% and 23% in the previous years respectively. But of 2,004 IC reviews on hand at 30 June, over half were more than 12 months old.

We sought to influence quality freedom of information (FOI) decision making by providing guidance to government agencies and working with them to improve the system. However, as I have said at Senate Estimates a number of times, the OAIC still requires sufficient resources to meet current demand and address long standing historical FOI backlogs.

PRIVACY

The OAIC also performs an important privacy complaint handling role for the community. In 2022–23, it received 34% more privacy complaints than in 2021–22. At 3,402, this is a record number.

In a year in which data breaches were so prominent, the OAIC received a 5% increase in notifications.

According to our Australian Community Attitudes to Privacy Survey 2023, data breaches are seen as the number one privacy concern by the community.

During 2022–23, the OAIC launched significant investigations into Optus, Medibank Private, Latitude Group and Australian Clinical Labs Investigations were also opened into retailers Bunnings and Kmart, focusing on the companies' use of facial recognition technology.

The OAIC continues to co-regulate the Consumer Data Right (CDR) with the Australian Competition and Consumer Commission. Our comprehensive regulatory program is focused on ensuring the CDR system maintains its strong privacy and security settings and that regulated entities comply with those requirements.

During the reporting period, the OAIC contributed our regulatory experience to the Attorney-General's Department's review of the Privacy Act 1988. This is critical reform and legislation is expected in 2024.

ORGANISATIONAL MATTERS

The May 2023 Budget provided additional funding to bring in expertise to conduct a strategic assessment of the OAIC to ensure we are well placed to meet the regulatory challenges of the future.

This is very welcome, as is the change in the composition of the OAIC following the Australian Government's announcement that the 3 statutory office holder model will be reinstated, with an Information Commissioner (as agency head), FOI Commissioner and Privacy Commissioner. This will provide increased specialisation and capacity.

Thank you. Acting FOI Commissioner Pirani and I would be pleased to answer your questions.