

OAIC Senate Estimates opening statement – November 2022

**From: Australian Information Commissioner and Privacy Commissioner
Angelene Falk**

I am pleased today to be joined for the first time at Senate Estimates by Leo Hardiman PSM KC, who started as Freedom of Information Commissioner in April this year. His appointment has been a very welcome development in supporting the OAIC's important FOI work.

Our appearance today comes up at a time when the issues of privacy and data security are at the forefront of public debate due to significant and concerning data breaches at Optus and Medibank.

ANNUAL REPORT

As Senators may be aware, our annual report was recently tabled.

It provides a detailed view of the work we are doing to uphold privacy and information access rights and strengthen online privacy protections.

It is clear that there was a high demand for our services during the year.

FOI

This was seen in the significant increase of 60% in applications for Information Commissioner review (IC review) of FOI decisions of agencies and ministers and a 42% increase in FOI complaints (215).

The OAIC finalised 35% more IC reviews and finalised 28% more FOI complaints.

When we look at the figures over 5 years, there has been a 209% increase in the number of IC reviews received by the OAIC over the last 5 years, and a 170% increase in the number finalised.

The increased volume of applications for IC reviews, together with the complexity of some matters, is a major challenge.

While we continually review our processes to create further efficiencies, we are also identifying where systemic improvements can be made in the FOI system, and that is something that Commissioner Hardiman is fully engaged with.

We have sought to improve privacy and access to information rights protections by providing detailed submissions and policy advice to the Australian Government and others.

PRIVACY

In 2021–22, we made 18 submissions and 60 bill scrutiny comments across both privacy and FOI. This includes our response to the Attorney-General's Department's Privacy Act Review: Discussion Paper.

We continue to co-regulate the Consumer Data Right (CDR) with the ACCC. The CDR marked its second year of operation in the banking sector and is being expanded to new sectors, including energy and telecommunications.

The Notifiable Data Breaches scheme also marked its fourth year of operation in 2022. Since its launch, we have finalised almost 4,000 data breach notifications, working with notifying organisations to support best practice in responding to data breaches.

The NDB scheme is very much in the news at the moment and we plan to present our latest figures this week.

As you know, the data breaches involving Optus and Medibank have impacted millions of Australians. We have announced an investigation into Optus and are continuing to make inquiries with Medibank.

The incidents further reinforce that organisations should only gather personal information that is necessary to carry out their business, and when that information is no longer required, they must take reasonable steps to destroy or de-identify the personal information they hold.

And when any organisation experiences a data breach that is likely to result in serious harm, they must be as clear and timely as possible about what kind of personal information is involved.

In the wake of the heightened focus on protecting personal information, the OAIC welcomes the introduction of the Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022 which proposes significantly increased penalties for serious and or repeated privacy breaches and greater powers for the OAIC to resolve breaches.

Updates to penalties are needed to bring Australian privacy law into closer alignment with competition and consumer remedies and international penalties under Europe's GDPR. In addition to this, new information sharing powers will facilitate engagement with domestic regulators and our international counterparts to help us perform our regulatory role efficiently and effectively.

We also look forward to the wider review of the Privacy Act being completed and the legislation being released.

Thank you. Commissioner Hardiman and I would be pleased to answer your questions.