GIBSON, Isla

From:	Angelene Falk
Sent:	Friday, 16 October 2020 9:33 AM
То:	Elizabeth Hampton
Cc:	Ruth Mackay
Subject:	RE: Legal staffing [SEC=OFFICIAL]

I'd appreciate a short discussion with Libby when we meet today thanks.

From: Ruth Mackay <ruth.mackay@oaic.gov.au>
Sent: Friday, 16 October 2020 9:03 AM
To: Elizabeth Hampton <elizabeth.hampton@oaic.gov.au>; Angelene Falk <angelene.falk@oaic.gov.au>
Subject: RE: Legal staffing [SEC=OFFICIAL]

Hello

s22

Caren was very interested in the role as Libby outlined it below.

I think it can proceed.

s22

Regards

Ruth



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From: Elizabeth Hampton <<u>elizabeth.hampton@oaic.gov.au</u>>
Sent: Friday, October 16, 2020 8:03 AM
To: Ruth Mackay <<u>ruth.mackay@oaic.gov.au</u>>; Angelene Falk <<u>angelene.falk@oaic.gov.au</u>>
Subject: Legal staffing [SEC=OFFICIAL]

Colleagues

s47F

In essence, that role looks like this:

- Working as 'General Counsel' directly to me
- Without responsibility for running the legal team
- Engaged in high-risk, high-complexity work

- Focused on CIIs partnering with David's CII team to provide strategic and technical legal advice regarding matters all the way through from investigation to resolution
- Assisting with drafting some matters
- Available to provide advice to the legal team, the Exec, R&S on important matters (including in relation to Privacy Act review).

Caren said that she thought the role sounded interesting and that she would be happy to do it.

Mel and David are aware of and supportive of the changed role. It has not been discussed with others.

22	
s22	
Ruth also flagged with Caren that changes to her role, in line with the above, would be	4672
progressed S47F and she understood and is comfortable with that.	
progressed 0-11 and she diderstood and is connortable with that.	
22	
We'll need a new duty statement for Caren, s22	
	15 A
We'll need to work up some internal comms, which I'd like to run past both S22 and Caren S22	87
to get ahead of the rumour mill	13
 I also think we'll need to advertise externally for a Director, FOI. S47F 	

Grateful for your thoughts and happy to discuss. Otherwise, if you both agree, Ruth and I can take this forward.

Cheers

L

Elizabeth Hampton | Deputy Commissioner Office of the Australian Information Commissioner GPO Box 5218 Sydney NSW 2001 | <u>oaic.gov.au</u> +61 2 9284 9832 | <u>elizabeth.hampton@oaic.gov.au</u>

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From:	Elizabeth Hampton
To:	Angelene Falk; Ruth Mackay
Subject:	RE: Legal staffing [SEC=UNOFFICIAL]
Date:	Monday, 19 October 2020 9:35:15 AM
Attachments:	image002.png
	image003.png
	image004.png
	image005.png

OK ---- so meetings:

- Ops GC
- Privacy Review governance GC
- COVIDSafe GC
- RAC GC
- CDR Director, Legal
- Monthly meetings re privacy complaints Director, Legal
- Monthly meetings re Enforcement (Connor, Michael, Sophie, Cate) GC
- Monthly meetings re FOI Director, Legal

Difference is related to GC = Principal Director role (hence Ops) and the different focus of each role.

L



From: Angelene Falk <angelene.falk@oaic.gov.au>
Sent: Monday, 19 October 2020 9:24 AM
To: Elizabeth Hampton <elizabeth.hampton@oaic.gov.au>; Ruth Mackay
<ruth.mackay@oaic.gov.au>
Subject: RE: Legal staffing [SEC=UNOFFICIAL]

In Green

From: Elizabeth Hampton <<u>elizabeth.hampton@oaic.gov.au</u>>
Sent: Monday, 19 October 2020 9:17 AM
To: Ruth Mackay <<u>ruth.mackay@oaic.gov.au</u>>; Angelene Falk <<u>angelene.falk@oaic.gov.au</u>>
Subject: RE: Legal staffing [SEC=UNOFFICIAL]

Hi Ruth

I've responded in red – thanks for your thinking on this.



Elizabeth HamptonDeputy CommissionerOffice of the Australian Information CommissionerGPO Box 5218 Sydney NSW 2001+61 2 9284 9832elizabeth.hampton@oaic.gov.au

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From: Ruth Mackay <ruth.mackay@oaic.gov.au>
Sent: Monday, 19 October 2020 9:06 AM
To: Elizabeth Hampton <elizabeth.hampton@oaic.gov.au>; Angelene Falk
<angelene.falk@oaic.gov.au>
Subject: RE: Legal staffing [SEC=UNOFFICIAL]

Hello

I agree with Libby's reasoning below – a similar situation occurred at the ACCC as I recall. I do think this would be assisted through further role clarity (see below). I have noted a couple of smaller / other things to work out / clarify:

Principal Director?

In relation to the Legal EL2: Is the Legal EL2 still a Principal Director? (I note that you have not called it this in the message below.)

In relation to the Principal Director question: if we are saying that the General Counsel work is essentially a new role because of our increasing enforcement action then is it the case that the Legal Director role is not any less complex than it has been in the past – and should still be Principal Director.

I think it's a 'normal' Director position once the high-end legal advice work is moved to the General Counsel. Caren would continue on her IFA because of the nature of the General Counsel work. S47F

I think that the role will be reduced because the Director won't have to be doing things that Caren currently does like leading the drafting on <mark>\$22</mark>, providing advice to Exec re various things etc

Agree

Role clarity

In relation to role clarity – my thinking is that it would be good for the line between what sits with the Legal team and what sits with the General Counsel needs to be a bright as possible to assist the change. I wonder whether we could use language like: The General Councel will provide advice to the Determinations team and will be engaged in the strategic and legal issues

underpinning our court based actions"

I agree – bright line would be great. I think that Caren's role will be more than assisting the Investigations team though – I expect that she'll be Sarah Ghali's 'go to' person on the Privacy Act review, will help FOI team with things like National Cabinet etc – high profile and complex matters across the board, but particularly, and for now, in relation to CIIs

Agree in principle. Suggest start targeted in the way Ruth suggests (and get that working well), with clarity that it will expand.

Committees?

Will either position be on the Ops committee (and other Committees for that matter)? I think 'normal' Director should be on Ops – much of what we do in Ops has a corporate law/ HR law focus – it would be good to have their input

My thinking is that the General Counsel would not be on the Ops committee – as the position is removed from a management role. Agree The Fair Work Ombudsman has two Committees (they call them Boards), one enforcement, one corporate. The General Counsel sits on both. In our case the "Legal" Director is a Director, not principal. Currently only principal Directors sit on Ops as I understand it. Please consider.

In relation to other Committee's my thinking is that we would want to avoid duplication (ie both positions being on Committees). So it would be the Legal Director who sat on things like the CDR management, privacy Review etc. The GC would sit on the RAC. I think that GC would be on RACs and Privacy Act review and probably COVIDSafe (because of the above) and 'normal' Director on CDR. But we can write that down and talk to both of them about it. Agree.

Risk managed position?

Is the GC a risk managed position? Presumably we are not reducing the legal team to accommodate the new role? (or are we?) I think it has to be a risk managed position – in that it's extra. Yes. It will be part of the additional funding for privacy and social media.

Regards

Ruth



From: Elizabeth Hampton <<u>elizabeth.hampton@oaic.gov.au</u>>
Sent: Sunday, October 18, 2020 4:33 PM
To: Angelene Falk <<u>angelene.falk@oaic.gov.au</u>>; Ruth Mackay <<u>ruth.mackay@oaic.gov.au</u>>

Subject: RE: Legal staffing [SEC=UNOFFICIAL]

I had thought that Emma would report to Bruce, but that Emma and Caren would work out systems to ensure they were aligned re the advice going out. I didn't think it would work if Caren was accountable for the work of the team.

It worked with <u>\$22</u> at Home Affairs. She was the FAS responsible for Legal Division – he was General Counsel off to the side. She would seek his views about important matters and sometimes requests to Legal Division would be channelled to him – but it was with their agreement.

I'll have a chat to David and ask him to speak with Sophie when Ruth advises she's contacted Caren and ahead of this going out to staff.

Thanks for looking at it

L



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From: Angelene Falk <angelene.falk@oaic.gov.au>
Sent: Sunday, 18 October 2020 3:44 PM
To: Elizabeth Hampton <<u>elizabeth.hampton@oaic.gov.au</u>>; Ruth Mackay
<<u>ruth.mackay@oaic.gov.au</u>>
Subject: RE: Legal staffing [SEC=UNOFFICIAL]

Generally looks good.

One part that remains less clear, is whether you envisage Emma providing a report (for example) through to Caren, for example to have visibility over the nature of advice provided, and if so whether she has any accountability for that work performed by the team? I'm thinking seeing as you say she will report directly to you, that there would not be accountability, and then that means the EL2 is directly accountable to Bruce?

Should Caren be accountable to Bruce? If to you instead, then there will need to be system between you and Bruce so that there's not a reverse work flow, and consistency of positions taken between "Legal" and "General Counsel."

Not a big issue, just a point of clarification.

Also, can you and David talk with Sophie prior to the email going out thanks.

A

From: Elizabeth Hampton <<u>elizabeth.hampton@oaic.gov.au</u>>
Sent: Sunday, 18 October 2020 2:26 PM
To: Ruth Mackay <<u>ruth.mackay@oaic.gov.au</u>>; Angelene Falk <<u>angelene.falk@oaic.gov.au</u>>
Subject: RE: Legal staffing [SEC=UNOFFICIAL]

Hello both

Ruth - I had a discussion with the Commissioner about this.

She is broadly happy with the proposed role for Caren.

She suggested that we put out an EOI for the Director, Legal position, as it is possible that there are others within the OAIC who will be interested in the role.

To that end, I've drafted the following two emails – one for Caren (if we have her home email address?? But otherwise to her work email) which will form the basis of a new duty statement – to be sent to her ahead of the EOI going out.

The second is an all staff EOI that explains the change in role and calls for expressions of interest (embedded in the email to Caren).



Feedback on either very welcome.

START

Dear Caren

s47F

As foreshadowed just ahead of your departure, we are looking to make some changes to your role to more effectively leverage your deep knowledge of the privacy law and strengthen our enforcement capacity and capability. I understand you thought the change was positive and that you were interested in the changed role, but I wanted to check in with you now that you've had a little time to think about it and now that we've done some further work refining it.

In essence, the role we have in mind is one in which you would:

- Working as 'General Counsel' directly to the Deputy, but without responsibility for running the Legal Team. That function will be undertaken by an EL2 officer.
- Be engaged in the high-risk, high-complexity work across the office
- Initially focused on CIIs partnering with David's CII team to provide strategic and technical legal advice regarding matters all the way through from investigation to

resolution

- Assist with drafting some CII matters
- Be available to provide advice to the legal team, the Exec, R&S on important matters (including in relation to Privacy Act review) on particularly high-risk, highly complex or high profile matters.

You would continue to have visibility of matters currently within the legal team, but would not be responsible for the day-to-day management of those matters. You would be an expert that the team could call on as needed to second counsel matters or provide advice and guidance. But this changed role would provide greater capacity for you to lean in on the really important and complex matters that the Commissioner would like us to focus on.

Given this change, we intend to call for internal EOIs for the role of Director, Legal, to be responsible for the management of the team, outputs and quality control. The draft EOI is below and I wanted to give you visibility of it ahead of it being put out to staff, which I expect will happen later this week.

'Colleagues

You will note from our Corporate Plan and strategic priorities that our office has a strong focus on enforcement action, particularly resulting from CIIs. Given this shift, we have decided to restructure the Legal team.

On her return from leave in November, Caren will work as General Counsel, directly to the Deputy Commissioner, without responsibility for managing the legal team. In this new role, she will be able to bring her significant legal technical and strategic expertise to assist the teams in the investigation and resolution of CIIs. She will also have more space to be able to assist with other key priorities, such as the review of the Privacy Act.

It will be wonderful to have more ability to leverage Caren's experience across these important areas of focus.

As a result, we are calling for expressions of interest from staff who are interested in assuming the role of Director, Legal, on an ongoing basis. The role will be responsible for managing the work, quality and staff of the legal team, ensuring that there is timely, relevant and high quality internal advice provided to us, that outsourced advice is procured appropriately, checked and promulgated, and that access to information requests are managed in line with best practice.

We are looking for a person with an unrestricted practicing certificate or the ability to obtain same, proven leadership and management experience, who is highly organised and has the ability to consider the OAIC's legal risks against a context of broader public service legal experience. We must continue to be exemplars when managing access to information requests, data breaches and our own compliance with the laws that we regulate, as well as demonstrating good practice in relation to the myriad of other matters about which we seek the assistance of our legal colleagues.

If you are interested in the role, please submit your CV and a brief outline of your claims

against the position to Ruth Mackay by [DATE].'

I will review your duty statement with a view to separating it into the two roles outlined above, but I wanted to confirm that you remain comfortable with the proposal and to let you know that I am free to discuss if you would like to. I'd also be grateful for any feedback you might have in relation to the proposed EOI – is there anything else we should particularly call out?

s47F	I look forward to hearing from you.
Regards	
Ruth	
END	
OAIC	Elizabeth HamptonDeputy CommissionerOffice of the Australian Information CommissionerGPO Box 5218 Sydney NSW 2001+61 2 9284 9832elizabeth.hampton@oaic.gov.au
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From: Elizabeth Hampton
Sent: Friday, 16 October 2020 8:03 AM
To: Ruth Mackay <<u>ruth.mackay@oaic.gov.au</u>>; Angelene Falk <<u>angelene.falk@oaic.gov.au</u>>
Subject: Legal staffing [SEC=OFFICIAL]

Colleagues

Ahead of Caren's latest period of leave, Ruth discussed with her the option of returning to a different and important role in our office.

In essence, that role looks like this:

- Working as 'General Counsel' directly to me
- Without responsibility for running the legal team
- Engaged in high-risk, high-complexity work
- Focused on CIIs partnering with David's CII team to provide strategic and technical legal advice regarding matters all the way through from investigation to resolution
- Assisting with drafting some matters
- Available to provide advice to the legal team, the Exec, R&S on important matters (including in relation to Privacy Act review).

Caren said that she thought the role sounded interesting and that she would be happy to do it.

Mel and David are aware of and supportive of the changed role. It has not been discussed with others.





Cheers

L



Elizabeth HamptonDeputy CommissionerOffice of the Australian Information CommissionerGPO Box 5218 Sydney NSW 2001+61 2 9284 9832elizabeth.hampton@oaic.gov.au

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GIBSON, Isla

From: David Stevens Sent: Wednesday, 18 November 2020 3:57 PM To: Adriana Gonzalez; Aleksandra The-Tjoean; Amanda Kuek; Justin Lodge; Leith Naji; Sarah Loh; Amy Kiely; Sophie Higgins; Kate Thorpe; Alastair Macleod; Connor Dilleen; Allegra Sadnick; David Moore; Kate Edwards; Alexandra Conlon; Andre Castaldi; Georgia Costigan; Andrew Stokes; Angela Qi; Wynn Le; Angela Wong; Angelene Falk; Antonella Habkouk; Athena Jayaratnam; Avanithah Selvarajah; Delaney Smith; Bernie Lai; Beti Ognenovski; Caren Whip; Cate Cloudsdale; Brenton Attard; Catherine Walsh; Emi Christensen; Chelsea Delahunty; Emma Robins; Bruce Cooper; Helen Grinter; Joseph Gouvatsos; Carl English; Cecilia Rice; Carla Wolnizer; Luke Tilbrook; Cassandra Burke; Margaret Sui; Catherine Carpenter; Juliet Morris; Clare Gregory; Hannah Kreiselmaier; Ji Jang; David Stevens; Dean Ford; Deanne Sourjah; Diana Weston; Dimitrios Kormas; Monika Phoenix; Domenic Vircillo; Elizabeth Manua; Galina Druc; Lisa Zarb; Honey Skinner; Jake Barry; Luke Smolonogov; Kristy Snodgrass; Jay Gillieatt; Jeffrey Gomes; Joel Livingston; Katie Kwong; Mark Smolonogov; Melanie Tang; Michael Foot; Rachel Da Costa; Sara Peel; Shoumia Nithiananthan; Soulla Alexandrou; Elizabeth Hampton; Tania Strathearn; Timothy Lowe; GAL Test; Trish Quan; Wendy Tian; Eddy Midgley; Eduardo Devia; Elena Arduca; Elizabeth King; Emily Harty; Emily Newton; Emma Liddle; Nikki Edwards; Melanie Drayton; Ruth Mackay; Irene Nicolaou; Jasmin Clarke; Jay Fradkin; Jenna Mercer; Jesse Matheson; Jessica Clarke; Jessica Eslick; Jim Thomas; Joanne Murray; John Molloy; Julie Brusentsev; Karam Kim; Karin Van Eeden; Kellie Fonseca; Lachlan Merrigan; Virginia Newell; Lisa Curtin; Michelle Veljanovska; Radhika Kumar; Raewyn Harlock; Rocelle Ago; Sarah Croxall; Sarah Ghali; Stephanie Otorepec; Zoe Allebone; Zoe Fitzell; Leeor Adar; Lisa Liang; Lorraine Nurney; Mario Torresan; Mark Lindsey-Temple; Media OAIC; Megan McKenna; Natalie Crow; Natalie Le; Nicholas Rose; Nicola Wikramanayake; Noor Oberoi; Peter Donnelly; Poorvaja Nirmaleswaran; Rachel Ranjan; Rebecca Brown; Renee Alchin; Shona Watson; Stanley Widdison; William Duff; Ying Chin; Sam Cheang; Sam Harrison; Sandra Wavamunno; Shelley Napper; Stuart Neely; Sujini Power Update from Exec [SEC=OFFICIAL]

Subject:







New Director Legal:

I am pleased to announce that following an expression of interest process Emma Liddle has been selected to be the new Director of the legal team. As per Ruth's all staff email of 9 November, Emma will work closely with Caren Whip, who will assume a General Counsel role to focus on enforcement issues. Thank you to others who expressed interest in the position and congratulations Emma.



From:	Caren Whip
To:	All OAIC
Subject:	Updates to the Privacy Officer appointment instrument and to the Guidance to Staff on Dealing with Privacy Complaints against the OAIC [SEC=OFFICIAL]
Date:	Wednesday, 3 February 2021 5:13:56 PM
Attachments:	image002.png image003.png
	image004.png image005.png

Good afternoon all

The OAIC's Privacy Officer appointment instrument and the Guidance to Staff on Dealing with Privacy Complaints against the OAIC were recently revised and have been approved by Elizabeth Hampton. The appointment instrument can be found on the OAIC website under 'Operational Information' as well as on FYI and at <u>D2021/000079</u>. The staff guidance can be found on FYI and at <u>D2021/000080</u>.

The Australian Government Agencies Privacy Code (the Code) which, as you would know, applies to all Australian Government agencies subject to the Privacy Act 1988 (except for Ministers) requires agencies to appoint a privacy officer, or privacy officers, and ensure that Privacy Officer functions under the Code are undertaken. The OAIC's instrument of appointment, which designates privacy officers within the OAIC, has been updated to reflect changes in the structure of the legal team, with a General Counsel and a Director.

The Guidance to Staff on Dealing with Privacy Complaints which outlines for staff how to deal with complaints about an act or practice of the OAIC that may constitute an interference with the privacy of an individual or individuals has also been updated.

The main changes that were made include:

- revisions to reflect the newly appointed roles of General Counsel and Director of the Legal Services team
- revisions to reflect changes in the processes involving when dealing with complaints against the OAIC made under s 36 of the Privacy Act.

I encourage you all to familiarise yourselves with the revised versions of these documents.

I will be happy to answer any questions or receive any feedback on the changes made, as will the legal team.

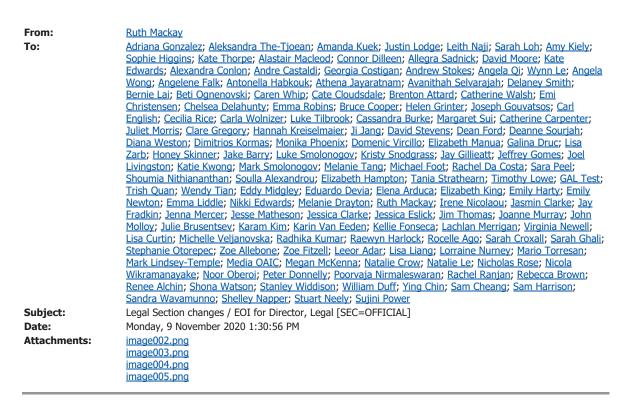
Thanks & Regards

Caren

O A I C logo ? ? ?

Caren Whip | General Counsel Office of the Australian Information Commissioner GPO Box 5218 Sydney NSW 2001 | oaic.gov.au +61 2 9284 9826 | Enquiries: 1300 363 992 | caren.whip@oaic.gov.au

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Colleagues

You will note from our Corporate Plan and strategic priorities that our office has a strong focus on enforcement action, particularly resulting from CIIs. Given this shift, we have decided to restructure the Legal team.

On her return from leave in December, Caren will work as General Counsel, directly to the Deputy Commissioner, without responsibility for managing the legal team. In this new role, she will be able to bring her significant legal, technical and strategic expertise to assist the teams in the investigation and resolution of CIIs. She will also have more capacity to be able to assist with other key priorities, such as the review of the Privacy Act.

It will be wonderful to have more ability to leverage Caren's experience across these important areas of focus.

As a result, we are calling for expressions of interest from staff who are interested in assuming the role of Director, Legal, on an ongoing basis.

The primary purpose of the Legal Services area is to deliver the timely provision of advice to the Australian Information and Privacy Commissioner, the Deputy Commissioner, Assistant Commissioners, the OAIC Leadership Team and other staff. The Director will work in and lead a small team of lawyers.

The role will be responsible for managing the work, quality and staff of the legal team, ensuring that there is timely, relevant and high quality internal advice provided to us, that outsourced advice is procured appropriately, checked and promulgated, and that access to information requests are managed in line with best practice.

We are looking for a person with an unrestricted practicing certificate or the ability to obtain same, proven leadership and management experience, who is highly organised and has the ability to consider the OAIC's legal risks against a context of broader public service legal experience. We must continue to be exemplars when managing access to information requests, data breaches and our own compliance with the laws that we regulate, as well as demonstrating good practice in relation to the myriad of other matters about which we seek the assistance of our legal colleagues.

If you are interested in the role, please submit your CV and a brief outline of your claims against the position to Ruth Mackay by 15 November. Ruth will work with our new Assistant Commissioner, Bruce Cooper, to fill this role. Bruce is taking over responsibility for the Legal team.

Regards

Ruth



Ruth MackayAssistant Commissioner, CorporateOffice of the Australian Information CommissionerGPO Box 5218 Sydney NSW 2001oaic.gov.au+61 2 9284 9723\$47E(d)ruth.mackay@oaic.gov.au

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