

Commissioner brief: Digital Identity

Key messages

- The OAIC welcomes the development of legislation for the Digital Identity scheme.¹
- It is important that the legislation contains strong privacy protections to ensure that the identity information of Australians is protected, regardless of which type of entity is using that information.
- We consider that it is appropriate for the OAIC to regulate the additional privacy protections that are introduced through legislation, and that participants that are not currently covered by the Privacy Act or comparable privacy law must opt in to the Act to ensure that there is a consistent application of privacy protection.
- The Digital Transformation Authority (DTA) has also received funding to expand Digital Identity to connect a greater number of services to the system (including state and territory services) over the next three years. The OAIC will receive funding in the 2021-22 financial year to undertake two privacy assessments (audits) of the system and develop guidance materials.²
- We welcome the opportunity to engage with the DTA in its development of a privacy protective scheme through our monitoring, guidance and advice functions.

Critical Issues

- The DTA is currently undertaking two main areas of work in relation to Digital Identity:
 - Developing legislation to underpin this scheme. This will enable the scheme to be used by State and Territory governments and the private sector, in addition to Federal Government agencies. It is proposed that the legislation will include additional privacy protections related to the scheme.
 - The DTA received funding in the 2020-21 Budget to expand the scheme over the next three years. This will include the rollout of the scheme to MyGov and a greater number of consumer-facing services integrated with the scheme.
- The OAIC is involved in both of these projects:

¹ The development of legislation and the OAIC's involvement in the expansion of the Digital Identity program are referred to in the DTA's 2020-21 PBS:

“As part of the 2020-21 Budget measure *JobMaker Plan – Digital Business Plan*, the Australian Government has provided the DTA with \$50.2 million over two years from 2020-21. This funding is part of the broader commitment of \$256.6 million to the DTA and partner agencies to deliver Digital Identity.

Digital Identity is all about making it easier and safer for people and businesses to get services and do business online. Expanding Digital Identity will see additional services connected to the system (including state and territory services). Improvements to privacy and security protections will be assured by the Office of the Australian Information Commissioner and the Australian Cyber Security Centre. A major component led by the DTA will be the development of legislation to expand the use of Digital Identity beyond Commonwealth entities. The legislation will embed the highest level of privacy, security protections and formalise ongoing governance arrangements for the system.” (p137 of Social Services portfolio PBS)

<https://www.dss.gov.au/about-the-department/publications-articles/corporate-publications/budget-and-additional-estimates-statements-budget-2020-21/portfolio-budget-statements-2020-21-budget-related-paper-no-112>

² See p 291 of OAIC 2020-21 PBS: <https://www.ag.gov.au/system/files/2020-10/17%202020-21%20Office%20of%20the%20Australian%20Information%20Commissioner%20PBS.PDF>

- The OAIC has consulted with the DTA since 2015 on the development of the Trusted Digital Identity Framework, which is the system of rules and protocols that underpin the Digital Identity scheme.
- We are now engaging with the DTA on the development of legislation for the Digital Identity scheme, including as a member of the Steering Committee (OAIC Band 2), and as an observer on a IDC to develop the legislation for the scheme (OAIC EL2).
- The expansion of the Digital Identity scheme is intended to be used across many widely used consumer-facing Government services, including Centrelink, Medicare and the ATO. Legislation would also enable it to be rolled out to State/Territory and private sector services, and will therefore involve identity verification across jurisdictions. The privacy and security of the system will be critical issues.

Possible questions

What is the OAIC's role in relation to Digital Identity?

- The OAIC has worked with the DTA since the commencement of work on the Trusted Digital Identity Framework, providing advice on the privacy aspects of the framework. This role is continuing throughout the development of legislation for the Digital Identity scheme, and expansion of the scheme to a wider range of services across government. This work aligns with our strategic priority, set out in our Corporate Plan, to influence and uphold privacy frameworks, influencing policy and legislative change to ensure that these frameworks remain appropriate.

Do you think that the Digital Identity scheme adequately protects the privacy of individuals?

- The OAIC has been pleased with the amount of focus the DTA has had on privacy throughout the development of the TDIF and Digital Identity scheme.
- The OAIC will continue to undertake our monitoring, advice and guidance functions in relation to this work, to ensure that the DTA takes a best privacy practice approach to the development of the proposed legislation and expansion of the Digital Identity scheme.

The OAIC has received funding for Expanding Digital Identity commencing in 2021-22. Are you required to undertake any activities this financial year and what will you do with the funding next financial year?

- The OAIC is not receiving funding for activities in relation to this project in 2020-21, however we will continue to undertake our normal monitoring and guidance-related functions to help ensure that the expansion of the scheme includes appropriate privacy protections and aligns with the objects of the Privacy Act.
- The funding in 2021-22 will enable the OAIC to undertake two privacy assessments (audits) to proactively monitor the privacy protections built into the Digital Identity program, which will assist the Digital Transformation Authority to mitigate privacy risks

with the system. This funding also includes provision for the OAIC to develop guidance about the privacy aspects of the Digital Identity system.

Key dates

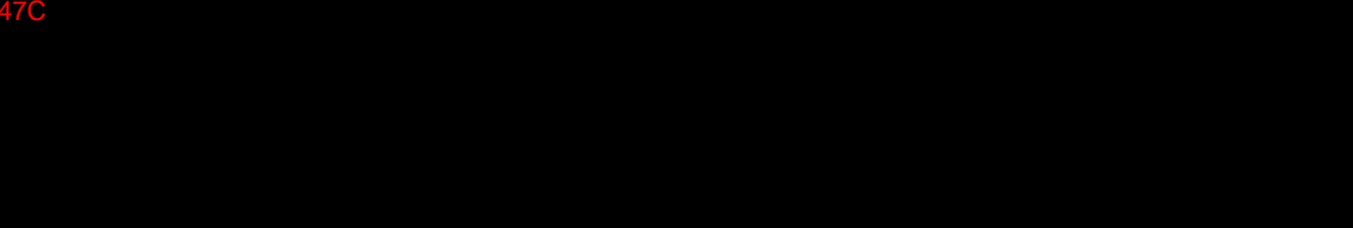


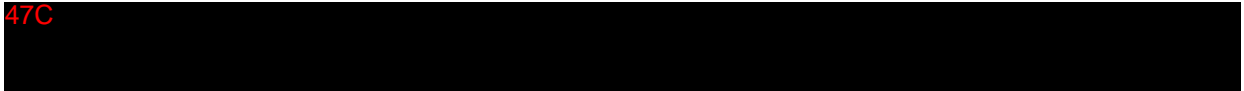
- 2014: The Financial Systems Inquiry (FSI) recommended a ‘national strategy for a federated-style model of trusted digital identities’.
- 2015: DTA commenced work on the FSI recommendation, with the development of the Trusted Digital Identity Framework (TDIF).
- 2019: DTA receives funding to develop legislation to underpin the Digital Identity scheme, which will incorporate many of the TDIF requirements into law and enable the scheme to be used by State and Territory governments and the private sector, in addition to Federal Government agencies.
- 2020: DTA receives approval for funding to expand the Digital Identity scheme to a larger range of Commonwealth Government services, including many consumer-facing services such as MyGov. OAIC receives funding as part of the budget measure (JobMaker Plan – Digital Business Plan) to undertake two assessments and produce guidance.

Key Facts

- The Digital Identity Scheme will act as a single, secure way to use government and private sector services online. It intends to replace the 100-point identification check and remove the need to visit government offices with identity documents. The DTA have stated that it will be voluntary to use the scheme.
- The scheme is currently in limited use, primarily for businesses and their representatives through the MyGovID portal, which is operated by the ATO. The scheme is also being piloted for some community-facing services, including the Unique Student Identifiers scheme.
- The scheme is underpinned by the Trusted Digital Identity Framework (TDIF), which is a set of rules and standards that accredited members must follow to take part in the Digital Identity scheme.
- The framework aims to increase safety, security, consistency and reliability when accessing government services online. Collectively, the TDIF documents sets the standards for:
 - How personal information is handled by participating agencies and organisations
 - The useability and accessibility of identity services
 - Identity system security and fraud protection
 - Identity system management and maintenance
 - Framework governance.
- The DTA was recently provided with funding to develop the Digital Identity Bill (the Bill) which will underlie the scheme and incorporate many of the TDIF requirements into

legislation. It is proposed that the legislation will include additional privacy protections related to the scheme.

The remainder of this brief is not public and should be taken as background only

- The DTA will release a consultation paper on the Bill for release in late October 2020.
- 47C 
- While the Digital Identity scheme is designed to operate within, and avoid duplication of, the existing privacy frameworks, the Bill will create the following additional privacy protections:
 - restrictions or prohibitions to give effect to the voluntary, opt-in nature of the Digital Identity program for individuals
 - restrictions on the use of the Digital Identity based on a person's age or capacity
 - consistent data breach notifications for participants in DTA digital identity program not subject to the Privacy Act mandatory data breach requirements
 - 47C 
- Other relevant restrictions for the scheme include:
 - 47C 
 - 47C 
 - restricting the use and retention of biometrics for any other purpose other than verifying a person's identity.
- The DTA is also considering who will regulate the scheme. At this stage, it appears that the DTA may be favouring a single regulator for the entirety of the digital identity framework.
- In parallel to the development of legislation, the DTA has just received funding approval to significantly expand the scheme over the next three years. This will include the rollout of the scheme to MyGov and a greater number of consumer-facing services integrated with the scheme.

OAIC position on Digital Identity Bill

- The OAIC has provided officer-level comments on redline issues in the scoping paper and the options paper. Our key comments are:

- The OAIC should regulate the additional privacy aspects of the scheme.
 - To ensure that there is a consistent application of privacy protection, users should be covered by equivalent privacy protections to the Privacy Act, either through State/Territory laws or by opting into the Privacy Act.
 - Use of the scheme should be voluntary, and entities should provide another option for individuals to verify their identity, particularly for Government services.
- It appears that the DTA is favouring placing the additional privacy obligations for the scheme in the Digital Identity legislation.

Document history			
Updated by	Reason	Approved by	Date
Sarah Croxall	October 2020 Senate Estimates		29/09/2020

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Sarah Croxall	October 2020 Senate Estimates		29/09/2020

Commissioner brief: 2019-20 Australian Government agency and ministerial FOI statistics¹ [D2020/017448](#)

Key messages

- The number of FOI requests made to Australian Government agencies and ministers in 2019–20² increased by approximately 6% over the previous year to 41,333 (when there was a 13% increase in the number of requests compared with the previous year).
- The Department of Home Affairs, Services Australia (formerly the Department of Human Services) and the Department of Veterans' Affairs together continued to receive the majority of FOI requests received by Australian Government agencies (70% of the total). Of these, 95% are from individuals seeking access to personal information.
- Of all FOI requests made to agencies and ministers, 81% were for personal information (33,584) and 19% for non-personal (7,749). This trend has been consistent over the past 4 years.
- 13,727 FOI requests were granted in full in 2019-20 (47% of all requests decided). This represents a decline in the percentage of FOI requests granted in full compared with 2018-19, when 52% of all FOI requests decided were granted in full.
- 11,221 FOI requests were granted in part in 2019-20 (38% of all requests decided). This represents an increase in requests granted in part compared with 2018-19, when 35% of all requests decided were granted in part.
- 4,410 FOI requests were refused in 2019-20 (15% of all requests decided). This represents an increase in requests refused compared with 2018-19, when 13% of all requests were refused.
- 79% of all FOI requests decided in 2019-20 were decided within the statutory timeframe. This is a decline in timeliness compared with 2018-19 (83%) and 2017-18 (85%) and may be due to the impact of the COVID-19 pandemic on agencies and ministers' ability to process FOI requests.
- There was a 25% decline in the amount of charges notified in 2019–20 (\$267,069) than in 2018–19. There was a 28% decline in the amount of charges collected in 2019-20 (\$88,090) than in 2018-19.
- The total cost attributable to processing FOI requests in 2019–20 was \$63.91 million, approximately 7% more than the previous financial year's total (\$59.85 million).
- There was a 106% increase in the number of documents agencies and ministers made available for direct download from their disclosure logs in 2019-20 (1,438) compared with 2018-19 (719).

¹ Percentages in this brief have been rounded to the nearest full number.

² In 2019–20, 294 agencies reported FOI statistics to the OAIC (however due to MOG changes not all these agencies were in existence at the end of the financial year).

Statistics						
Period	Number of requests to agencies	% personal vs non-personal	Granted in full ³	Granted in part ⁴	Refused ⁵	% processed within statutory timeframe
2019-20	41,333 (+6%)	81% pers (33,584) (-2 percentage points) 19% non-personal (7,749) (+2 percentage points)	47% (13,727) (-5% percentage points)	38% (11,221) (+3 percentage points)	15% (4,410) (+2 percentage points)	79% (23,066) (-4 percentage points) 80% pers (19,002) 73% non-pers (4,064)
2018-19	38,879 (+13%)	83% personal (32,440) 17% non-personal (6,439)	52% (15,623) (+2 percentage points)	35% (10,541) (+1 percentage point)	13% (3,980) (-3 percentage points)	83% (24,893) (-2 percentage points) 83% personal (21,233) 80% non-personal (3,660)
2017-18	34,438 (-13%)	82% personal (28,199) 18% non-personal (6,239)	50% (15,778) (-2 percentage points)	34% (10,767) (-1 percentage point)	16% (3,087) (+6 percentage points)	85% (26,879) (+27 percentage points) 85% personal (21,952)

³ Expressed as a percentage of all FOI requests decided during the year.

⁴ Expressed as a percentage of all FOI requests decided during the year.

⁵ Expressed as a percentage of all FOI requests decided during the year.

						86% non-personal (4,927)
2016-17	39,519 (+4%)	82% personal (32,383) 18% non-personal (7,136)	55% (18,877)	35% (11,767)	10% (3,385)	58% (19,607) 54% personal (16,343) 84% non-personal (3,264)

- The increase in FOI requests in 2019–20 was principally driven by a substantial increase in FOI requests made to Services Australia (+43%). Services Australia states that during the second half of 2019–20, they experienced a surge in FOI requests from ‘a specific cohort of applicants who were seeking access to very similar document types.’

Table 2: Charges – notified and collected 2016-17 to 2019-20

Period	Number of requests notified	Amount notified	% change from previous	Amount collected	% change from previous
2019-20	716	\$267,069	-25%	\$88,090	-28%
2018-19	822	\$357,039	-7%	\$122,774	+6%
2017-18	1,029	\$383,531	-24%	\$115,863	-21%
2016-17	1,317	\$505,394	+1%	\$147,043	—

Practical refusals

- Agencies and ministers sent 71% more notices of an intention to refuse an FOI request for a practical refusal reason in 2019–20 than in 2018–19 (3,803 in 2019–20, compared with 2,225 in 2018–19). The reason for this increase was a substantial increase in the number of practical refusal notices issued by the Department of Home Affairs (which issued 792 notices in 2018–19 and 2,713 in 2019–20). The Department of Home Affairs issued practical refusal notices for 15.45% of all the FOI requests it received during 2019–20. In 2017–18, 4,128 notices were issued (86% more than in 2018–19).

[NOTE: the Department of Home Affairs advised on 21.10.2020 that it has wrongly reported statistics relating to practical refusals, in particular in relation to the number of requests subsequently processed after a practical refusal notice was sent.](#)

Exemptions

- The personal privacy exemption (s 47F) remains the most claimed exemption. It was applied in 38% of all FOI requests in which exemptions were claimed in 2019–20; the same percentage as in 2018–19. The use of s 47F has declined over the past two years – it comprised 43% of the exemptions applied in 2017–18.
- The next most claimed exemptions were s 47E (certain operations of agencies), s 37 (documents affecting enforcement of law and protection of public safety), s 47C (deliberative processes), and s 38 (documents to which secrecy provisions apply). This is similar to previous years.
- There was a 7% increase in amendment applications in 2019–20, with seven agencies receiving 717 amendment applications (no applications were received by ministers). In 2018–19, 673 applications were received.
- See Com brief - Trends in use of exemptions in FOI Act [D2020/017449](#).

Disclosure logs

Australian Government agencies reported publishing 1,949 new entries in disclosure logs during 2019–20; including documents available for download directly from the agency or minister’s website in relation to 1,468 requests, documents available from another

website in relation to 56 requests, and 425 entries in which the documents are available by another means (usually upon request). This is approximately **62% higher than 2018–19, when 1,200 entries were added**Costs

- The total cost attributable to processing FOI requests was \$63.91 million, almost 7% more than 2018–19, when the total cost was \$59.85 million. The reason for the increase in the overall cost of FOI activity is a 6% increase in the total staff hours devoted to FOI in 2019–20.
- General legal advice costs (\$719,718) decreased 53% compared with 2018–19 (\$1,517,125). Litigation costs (\$911,551) increased approximately 120% from 2018–19 (\$414,635). General administrative costs (\$136,634) decreased approximately 5% from 2018–19 (\$144,140). Training expenses (\$168,339) decreased 56% over 2018–19 (\$385,745). ‘Other’ non-labour costs (\$242,585) decreased 8% from 2018–19 (\$263,206).
- The average cost per FOI request determined (granted in full, in part or refused) was \$1,546 in 2019–20 (a fraction of a percentage more than in 2018–19).

Possible questions

- ***How has the COVID-19 pandemic affected access to government documents through FOI?***

While some agencies have attributed increases in the number of FOI requests received during 2019–20 to the impact of the COVID-19 pandemic, the increase in total FOI requests (2,454 more than in 2019–20) is the direct result of a substantial increase in FOI requests made to Services Australia (2,672 more requests than in 2018–19).

The COVID-19 pandemic affected the ability of some Australian Government agencies to respond to FOI requests within the statutory timeframes in the FOI Act. In some agencies, FOI staff were redeployed to work in frontline customer service roles while the internal redeployment of other staff to meet service delivery needs made it difficult to obtain documents to satisfy FOI requests and to engage with decision makers, many of whom assumed additional responsibilities as part of their agency’s response to the pandemic. Interagency consultation was more difficult, particularly with agencies heavily involved in delivering Australia’s response to the pandemic.

For agencies with staff working remotely, some aspects of FOI processing was more difficult, for example, manipulating large files and using redaction software can be slower on domestic internet servers. In some cases the necessary IT infrastructure was not in place to allow staff to work from home, resulting in delays that affected productivity. Posting and receiving hard copy documents, particularly for staff living in locations subject to movement restrictions was difficult. For some agencies, the impact of COVID-19 was more significant because they were in the early stages of integrating functions following machinery of government changes that came into effect on 1 February 2020.

Because of the issues outlined above, some agencies and ministers found it difficult to meet the statutory timeframes in the FOI Act. This resulted in a significant increase in

the number of applications from agencies and ministers to extend the time to process FOI requests.

- ***What action is the OAIC proposing to take to address poor compliance with statutory timeframes?***

The OAIC continues to monitor agency compliance with statutory timeframes and we are working directly with some agencies to address this issue. Work undertaken by my office in promoting compliance with statutory timeframes includes:

- making decisions extension of time applications
- using our formal powers to require provision of a statement of reasons when a person seeks review of a deemed refusal
- investigating complaints about delay
- providing assistance through our enquiries phone line
- publishing regular e-newsletters for FOI practitioners
- publishing resources on our website, including checklists to streamline the FOI request process.

- ***Many agencies do not make documents available for direct download from their disclosure logs; they provide contact details only. What is the OAIC doing to address this?***

The FOI Guidelines [14.32] say that publishing documents directly on the disclosure log, rather than describing the documents and how they can be obtained on request, is consistent with the FOI Act object of facilitating public access to government information. We are reviewing the Guidelines to place more emphasis on direct publication, with reference to *the Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009* which provides that information is to be published on a website and a description and contact details, only if the information cannot readily be published in that way.

In October 2019, the OAIC commenced a desktop review of agency compliance with disclosure log obligations. The review assessed 38 Australian Government agencies, including departments. ^{47C}

^{47C}

We anticipate the desktop review will be published shortly.

- ***Some agencies received significant increases in the number of FOI requests last year; what assistance does the OAIC provide to support agencies discharge their functions and powers under the FOI Act?***

The OAIC publishes a range of resources to assist agencies discharge their functions and powers under the FOI Act. These include:

- agency resources, FAQs and the FOI Guidelines
- regular e-newsletters for FOI practitioners which provide practical guidance and processing tips
- the publication of IC review decisions provides guidance to agencies in the use of FOI Act provisions and the OAIC holds twice yearly information sessions for FOI practitioners (although our ability to do this has been impacted by COVID-19 restrictions)
- the OAIC also operates an enquiry line that agencies can call for advice and guidance.
- ***Why don't more agencies make documents available to the public without requiring an FOI request to be made?***

The OAIC's Corporate Plan identifies proactive disclosure of government held information, including the establishment of administrative access schemes, as a key focus for the coming year. We have suggested these items be included in the next Open Government National Action Plan and we promote these through our Information Contact Officers Network e-newsletters and information sessions.

Key dates (mandatory section / heading – not to be removed)
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- N/A

Document history

Updated by	Reason	Approved by	Date
Nikki Edwards	Senate Estimates October 2020	Raewyn Harlock	29.9.2020

Commissioner brief: FOI Extension of time applications

Key messages

- An agency or minister must make a decision on an FOI request within 30 days, unless the timeframe has been extended.
- Where an agency or minister is unable to process an FOI request within the processing period, they may request an extension of time:
 - from the FOI applicant (by agreement under s 15AA)
 - from the Information Commissioner under:
 - s 15AB (complex or voluminous)
 - s 15AC (where the agency or minister has been **unable to process the request within the statutory timeframe**)
 - s 51DA (where the agency or minister has been unable to process the request for **amendment or annotation**)
 - s 54D (where the agency or minister has been unable to process an **internal review application** within the statutory timeframe).
- Part 3 of the FOI Guidelines encourage agencies to seek agreement with the FOI applicant prior to lodging an extension of time request with the OAIC.
- The OAIC requires agencies and ministers to provide supporting documentation during the consideration of an extension of time application. The application must include reasons why the request could not be processed within the statutory processing period and provide a plan on how the further time (if granted) will be utilised by the agency or minister.
- It is important for agencies and ministers to consider early in the process whether an extension of time is required, as an application for an extension of time is not an automatic grant and each application is considered on its individual merits.
- In 2019–20, 79% of all FOI requests determined were processed within the applicable statutory time period:
 - 80% of all personal information requests and
 - 73% of non-personal requests.

This represents a slight decrease in timeliness of decision-making from 2018–19 (when 83% were decided within time).

- In 2019–20, there was an increase in the number of FOI requests decided more than 90 days after the expiry of the statutory time period (including any applicable extension of time provisions) when compared with 2018–19 (10% in 2019–20, up from 2% in 2018–19).

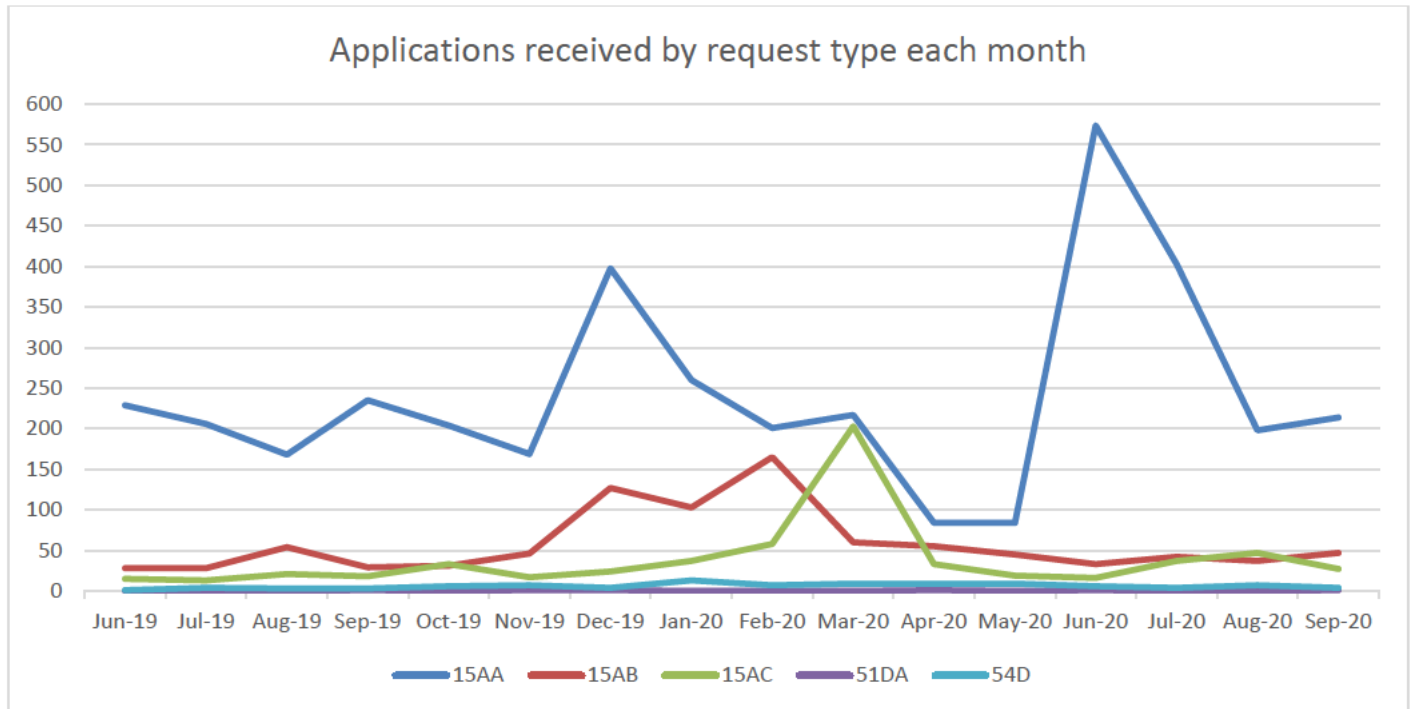
Critical facts

- In 2017-18, 2018-19 and 2019-20 the OAIC finalised:

Request Type	2017-18	2018-19	2019-20
Section 15AA (agreement between agency and applicant)	2,762	2,959	2,393 (-19%)
Section 15AB (extension based on complexity or voluminous)	370	562	786 (+48%)
Section 15AC (deemed access refusal decision made)	122	178	492 (+176%)
Section 51DA (extension to deal with an amendment or annotation request)	1	1	5 (+400%)
Section 54D (deemed affirmation of primary decision)	38	41	80 (+95%)
Total	3,293	3,741	3,756

EOT Applications received by request type

- The following graph sets out the number of extension of time applications received by the OAIC since June 2019.



- On 25 October 2019, the IC commenced an Information Commissioner Investigation into the Department of Home Affairs' compliance with the timeframes set out under the FOI Act for requests relating to non-personal information. The increase of EOT applications received may be a result of the announcement of this investigation.
- During January – March 2020, the OAIC received 655 applications for extension of time under ss 15AB, 15AC, 51DA and 54D of the FOI Act. This represented an increase of 352% in extension of time applications for the same period in January - March 2019. The increase in applications generally related to COVID-19, staffing affected by agency shutdown over the Christmas period, effects of the bushfires and ^{s 47E(d)} information not publicly available). Please see **Attachment A**.
- During March to June 2020, many of the 1,889 extension of time requests made by agencies referred to COVID-19 related reasons why the agency has been unable to process the FOI request within the statutory processing period. Agencies referred to a reduction in staffing due to reassignment of FOI processing officers to other areas of the agency as the main reason for seeking the extension. Other reasons included a lack of available decision makers or subject matter experts to retrieve and advise of the documents within the scope of a FOI request.
- In June 2020, 574 notifications of an agreement to extend the processing period under s 15AA of the FOI Act was received by the OAIC. The Department of Home Affairs accounted for 397, Australian Taxation Office 57 and Services Australia 53.

Possible questions

- What was the effect of COVID on extension of time applications received by the OAIC?***

During the 1st quarter of 2020-2021, we have seen a significant reduction in the number of agencies applying for extensions of time with COVID being provided as a reason for seeking that extension.

In March 2020, the OAIC experienced a significant increase of extension of time applications and notifications (489 total). Between March and June 2020, the OAIC received 1,889 extension of time applications and notifications (ss 15AA, 15AB, 15AC, 51DA and 54D), that is an increase of 55% for the same period in 2019 (with 1,219 received in 2019).

- ***What action is the OAIC proposing to take to address poor compliance with statutory timeframes?*** The OAIC continues to monitor agency compliance with statutory timeframes and works directly with some agencies to address this issue. We are pleased to see overall improvements in timeliness since 2016-17 (where 58% of requests were processed within the statutory timeframe). For 2019-20 79% were processed within the statutory timeframe. Work undertaken by my office in promoting compliance with statutory timeframes includes:
 - making decisions extension of time applications
 - using our formal powers to require provision of a statement of reasons when a person seeks review of a deemed refusal
 - investigating complaints about delay
 - providing assistance through our enquiries phone line
 - publishing regular e-newsletters for FOI practitioners and
 - publishing resources on our website, including checklists to streamline the FOI request process.
- ***What information does the OAIC require from agencies and ministers prior to making an extension of time decision?*** The OAIC requires:
 - the name and contact details of the FOI applicant
 - the scope of the FOI request
 - the reasons for the delay
 - an explanation of why the statutory timeframe is not able to be met.

Inadequate explanatory information to support the application for an extension may cause the application to be declined. Further information is set out on our website: see 'Extension of time provisions under the FOI Act'.¹

- ***What factors does the OAIC take into consideration when considering an extension of time application?*** Factors considered include:
 - whether the FOI request is complex and/or voluminous

¹ <https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/extension-of-time-for-processing-requests/>.

- the length of time that has been requested by the agency or minister
- whether other extension provisions have been applied
- whether adequate explanatory information has been provided to support the application for an extension
- what work has already been undertaken to process the FOI request, and
- what work will be undertaken if the extension of time is granted.

In some circumstances, the OAIC may consult with the FOI applicant. Any comments the FOI applicant makes will be taken into consideration.

- ***How long can the OAIC grant an extension of time for?*** The Information Commissioner may grant an extension of time for 30 days, or such other period as the delegate of the Information Commissioner considers appropriate. The time period requested by the agency or minister is based on the facts and circumstances of each application.
- ***Do you always grant an extension of time?*** No. Each application is considered on its merits. Applicants may be consulted for their comments on the application, and those comments will be considered by the decision maker.

- ***How many extensions of time applications were received from agencies and Ministers in the 1st quarter of this financial year?***

In the first quarter of this financial year the OAIC received 253 ss 15AB, 15AC, 51DA and 54D applications from agencies and Ministers. The OAIC was also notified by agencies and ministers of a further 815 s 15AA agreements.

- ***How many extensions of time applications were received from agencies and Ministers in the last financial year?***

In the 2019-20 financial year the OAIC received 1353 ss 15AB, 15AC, 51DA and 54D applications from agencies and Ministers. The OAIC was also notified by agencies and ministers of a further 2,800 s 15AA agreements.

- ***How many extension of time applications does the OAIC grant?***

In the 1st quarter of FY2020-2021, the OAIC granted 82% of all extension of time applications received that require an Information Commissioner decision.

In 2019-20, the OAIC granted 69% of all extension of time applications received that require an Information Commissioner decision. The OAIC 'granted varied' 10% and refused 15%. Four percent of the applications received by the OAIC were subsequently withdrawn.

- ***Have you issued any guidance about what FOI applicants can do if they have not received a decision within time?***

The OAIC has published information about an individual's review rights and the availability of Information Commissioner review where a decision has not been made

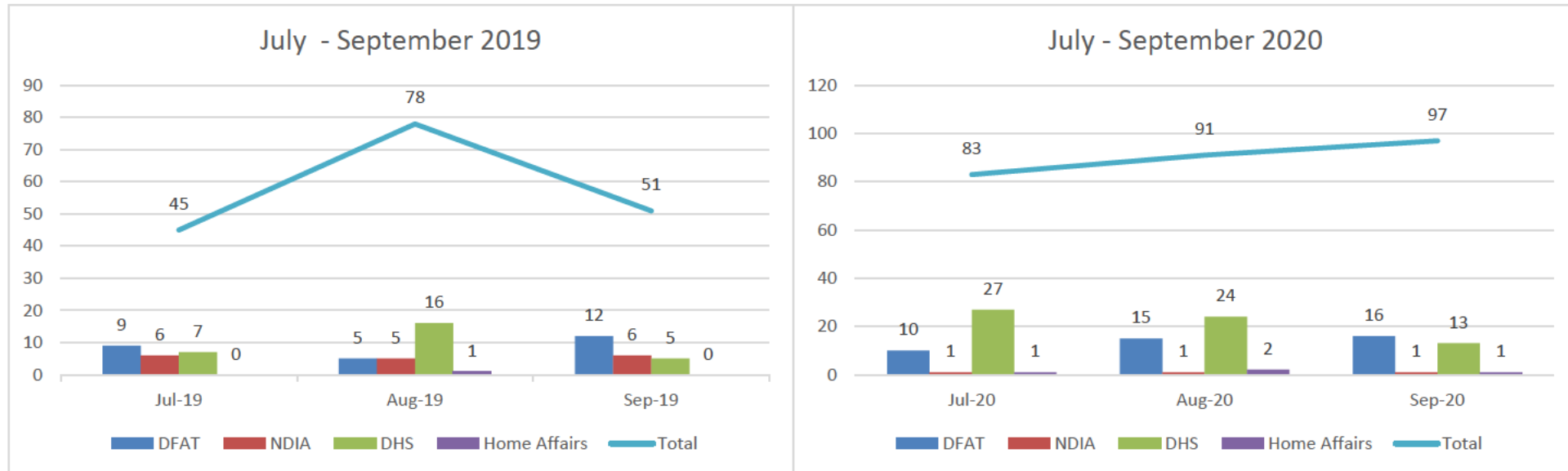
within time.² If an agency or minister doesn't make a decision on the FOI request within the required time, the FOI request is taken to have been refused. Any charge the agency or minister asked to pay is no longer due, and any deposit must be refunded. In these circumstances, the FOI applicant has the right to ask for Information Commissioner review of this decision (internal review does not apply to this kind of decision).

Document history			
Written by	Reason	Approved by	Date
Shelley Napper	October 2020 Senate estimates	Angelene Falk	October 2020

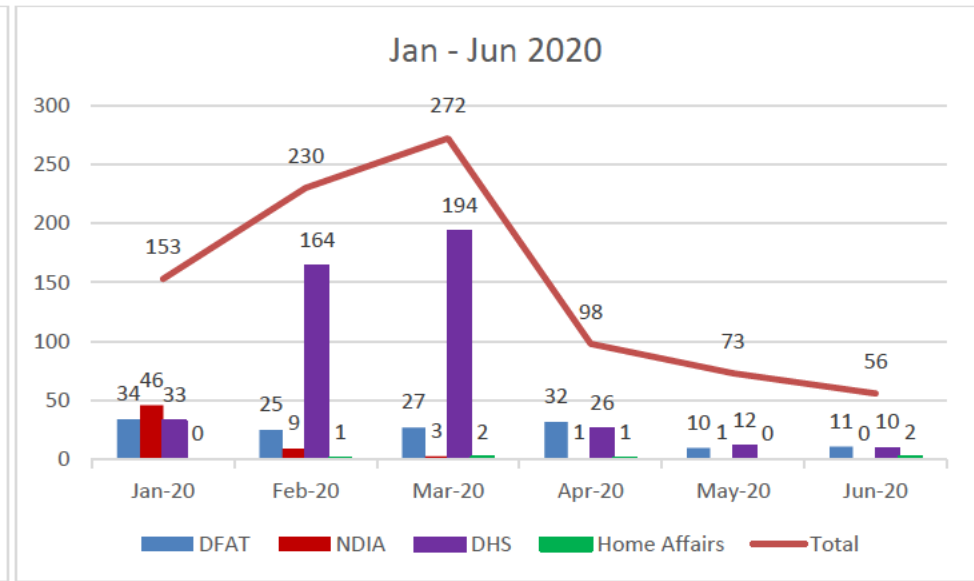
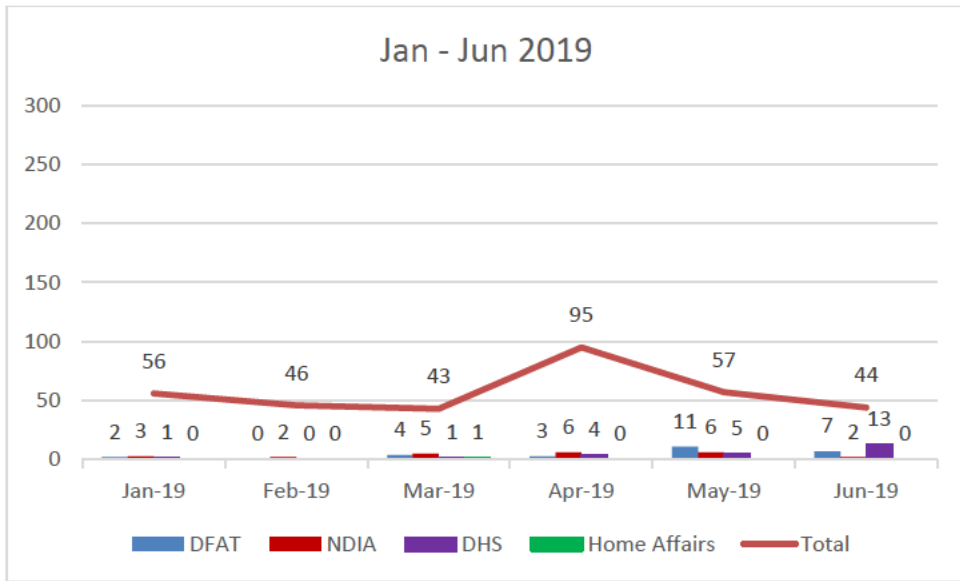
² OAIC website: <https://www.oaic.gov.au/freedom-of-information/how-to-make-an-foi-request/when-to-expect-a-decision/> and <https://www.oaic.gov.au/freedom-of-information/reviews-andcomplaints/information-commissioner-review/>.

Extension of time application received under ss 15AB, 15AC, 51DA and 54D

During the 1st quarter of this financial year, the OAIC received an increase of 56% in extension of time applications for the same period in July - September 2019.³



During January – June 2020, the OAIC received an increase of 159% in extension of time applications for the same period in January - June 2019.



Commissioner brief: FOI Complaint issues

Key messages

- Complaint issues:
 - The most complained about issue is delay by agencies processing FOI requests.
 - Other complaints relate to (in order of most complained about):
 - failure to provide assistance during the practical refusal consultation process
 - the imposition of charges
 - failure to acknowledge FOI request
 - searches
 - extension of processing time to consult with third party but no consultation required
 - poor administration/customer service
 - poor communication/failure to update
 - failure of decision maker to provide name
 - poor record keeping (leading to an inability to find requested documents)
 - the Information Publication Scheme
 - deletion of public servants' personal information from documents before release.
- I am of the view that making a complaint is not an appropriate mechanism where IC review is available, unless there is a special reason to undertake an investigation and the matter can be dealt with more appropriately and effectively as a complaint. IC review will ordinarily be the more appropriate avenue for a person to seek review of the merits of an FOI decision, particularly an access refusal or access grant decision.
- The OAIC will soon publish a summary of the de-identified outcomes of finalised FOI investigations on the OAIC website.

Statistics

Period	Number received	Number finalised	Finalisation timeframe	S 86 notices – with and without recommendations

2019-20	109 (increase of 79% on previous year)	71 (increase 223% on previous year)	48% > 12 months 52% <12 months	46 issued: • 27 with recommendations • 19 without recommendations
2018-19	61 (decrease of 2% on previous year)	22 (decrease of 24% on previous year)	18% > 12 months 82% <12 months	Nil s 86 issued
2017-18	62 (72% increase on previous year)	29 (61% increase on previous year)	17% > 12 months 83% <12 months	5 issued: • 4 with recommendations • 1 without recommendation

- Number of complaints on hand at 30 September 2020: 136
- Percentage of complaints on hand are more than 12 months old: 47%
- For an overview of the status of finalised FOI complaints please see **Attachment A** to this brief.

Possible questions

- ***Your evidence is that delay is the most complained about issue. What action is the OAIC taking to address this?***

The OAIC oversees the extension of time provisions in the FOI Act which provides valuable insight into the issues that affect agencies' ability to comply with decision making timeframes. The OAIC is currently reviewing its guidance material to focus on the need for agencies to take action early in the processing cycle and to routinely engage with applicants when processing FOI requests. The OAIC is currently monitoring agencies' compliance with statutory decision making timeframes.

- ***What department or agency is the most complained about and what kinds of complaints are people making?***

s 47E(d)

The Department of Home Affairs complaints are almost exclusively about delay. Of the 13 complaints regarding delay finalised by the Commissioner in 2019 – 20, the Commissioner found that the Department had not complied with the statutory processing period in all 13 complaints (relating to 17 case studies). In light of the

related CII into the Department's processing of request for non personal information the Commissioner deferred making any recommendations until the outcome of the CII.

s 47E(d)

- ***What recommendations have you made to improve FOI processing within agencies?***

I have made a number of recommendations for agencies to:

- issue statements – by the CEO or Secretary – to all staff highlighting the agency's obligations under the FOI Act
- conduct audits on its processes
- update its policies and procedures in relation to FOI processing consistent with the findings of specific investigations
- take remedial action including contacting FOI applicants where I found that review rights had not been included in the response to FOI requests pursuant to s 26 of the FOI Act to advise them of their review rights
- implement training processes for staff.

- ***Are agencies implementing your recommendations?***

Yes. Agencies have not raised any objections and have taken steps to implement my recommendations.

- ***What happens if agencies do not implement your recommendations?***

Under s 89 of the FOI Act I have the discretion to issue a notice of implementation requiring an agency to provide particulars of steps the agency has taken to implement a recommendation. Where an agency does not comply with the implementation notice I can provide a report to the responsible minister.

Document history

Updated by	Reason	Approved by	Date
Irene Nicolaou	Estimates October 2020	Angelene Falk	October 2020

¹ The OAIC has commenced investigation in three of these complaints.

Attachment A – Summary of outcomes of FOI investigations

Respondent	Issues	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response received	Status
Department of Prime Minister and Cabinet • CP18/01243	Compliance with statutory processing timeframes.	Non-personal information.	22 November 2019	The Department was found to have not complied with the statutory processing periods in processing 35.56% of FOI requests in the 2017-18 financial year and 72.65% in the 2018-19 financial year.	Four recommendations were made including: <ul style="list-style-type: none"> • a statement to be issued to all staff highlighting the Department's obligations under the FOI Act. • FOI requests are processed in accordance with the objects of the FOI Act • the development of policies and procedures in relation to administrative access • conduct a review and audit of the Department's FOI processing guidance material and its compliance with statutory timeframes. 	Response received 24 February 2020 Response: The Department has not raised any objections to the recommendations made. Recommendation 1: implemented Recommendation 2: The Department reviewed its current e-learning induction package and is developing enhancements to the learning material. Staff have also been reminded through all staff message the guidance and resources available. Recommendation 3: The Department regularly assist FOI applicants via administrative access where appropriate. The Department currently has 2% of FOI requests which relate to personal information. The	Recommendations adequately implemented. Finalised.

Respondent	Issues	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response received	Status
						<p>Department will continue to consider whether development of an official administrative access scheme will be useful.</p> <p>Recommendation 4(a): The Department has reviewed the business rules, FOI caseload and processing procedures. The Department as a result has updated its internal policies and procedures to ensure statutory timeframes are clearly set out for all officers involved in FOI processing. A new internal FOI case officer checklist has been developed and implemented with specific guidance on timeframes with clear escalation points.</p> <p>Recommendation 4(b): The Department conducted an audit</p>	

Respondent	Issues	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response received	Status
						<p>on compliance rates for 2019 calendar year and 2019-20 financial year. The Department found that it complied with the statutory processing period for the calendar year 2019 in approximately 86% of valid FOI requests. For the current financial year 2019-20 the Department finalised by 'active decision' approximately 90% of requests within the statutory processing period. The audit found that AGS training for SES officers occurred in the second half of 2018. Videos and training modules of these training packages have been uploaded to Department's FOI intranet site.</p>	
<p>Australian Federal Police</p> <ul style="list-style-type: none"> • CP18/00660 • CP18/00941 • CP18/00942 • CP18/01662 	Compliance with statutory processing timeframes.	Non-personal information.	22 November 2019	The AFP was found to have not complied with the statutory processing periods in processing	<p>Four recommendations were made including:</p> <ul style="list-style-type: none"> • a statement to be issued to all staff highlighting the AFP's obligations under the FOI Act. 	<p>Response received 24 February 2020</p> <p>Response: The AFP in its response has accepted all the</p>	<p>Recommendations adequately implemented. Finalised.</p>

Respondent	Issues	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response received	Status
<ul style="list-style-type: none"> CP18/01969 				34.44% of FOI requests in the 2017-18 financial year and 53.08% in the 2018-19 financial year.	<ul style="list-style-type: none"> a review of its guidance relating to early assessment of whether an extension of time or consultation may be required a review and update its guidance material in line with the findings of the investigation. 	<p>recommendations and have either implemented the recommendation or taking action to implement them.</p> <p>Recommendation 1: Implemented</p> <p>Recommendation 2: The AFP has commenced a new organisational structure which includes the addition of a Chief Learning Officer. The AFP will utilise the Officer to ascertain what additional FOI training can be provided. The AFP will also review the focus and content of the online FOI training package.</p> <p>Recommendation 3: The FOI team has been reminded of the importance of adhering to the statutory processing timeframes. The FOI team was directed to assess requests early and to keep applicants informed.</p>	

Respondent	Issues	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response received	Status
						<p>Recommendation 4: The Standard Operating Procedures and chaser document has been updated. The AFP will continually review and update these documents to ensure they remain current and are fit for purpose.</p>	
<p>Services Australia²</p> <ul style="list-style-type: none"> • CP18/00657 • CP18/00658 • CP18/00825 	Acknowledgment of FOI requests in accordance with statutory timeframes.	Personal and non-personal information made by post.	22 November 2019	Delay in acknowledging the FOI requests was due to the complainant sending the FOI request as part of 'shared' correspondence addressed to the aged care pension claims nominated PO Box rather than addressed to the FOI or central PO Box, and human error in categorising the documents as FOI requests at the mail sorting stage.	<p>Two recommendations were made including:</p> <ul style="list-style-type: none"> • to provide general FOI training to the external providers tasked with opening and categorising correspondence to assist in the identification of FOI requests sent to general Departmental post boxes. • to review and update its guidance material in line with the findings of the investigation. <p>Response due 24 February 2020. Extension granted to 5 March 2020 in line with response due for Services Australia complaints below.</p>	<p>Response received 16 March 2020.</p> <p>Both recommendations have been adopted and implemented.</p>	<p>Recommendations adequately implemented.</p> <p>Finalised.</p>
Services Australia		Non-personal	5 December 2019	Services Australia took a narrow	Seven recommendations were made including:	Audit due 30 October 2020 .	

² At the time this investigation commenced the responsible department was the Department of Human Services. On 29 May 2019, the Administrative Arrangements Order established Services Australia.

Respondent	Issues	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response received	Status
<ul style="list-style-type: none"> • CP17/00532 • CP17/00734 • CP18/00323 				<p>approach to interpreting requests for information. Services Australia did not comply with the request consultation process under s 24AB.</p> <p>Services Australia's s 24AB consultation notices did not comply with the requirements of s 24AB(2).</p> <p>Services Australia did not take into account public interest factors when deciding if applying charges is appropriate. At the time the decisions were made in the relevant FOI requests, Services Australia's processes for collecting charges imposed under the FOI Act were inconsistent with the objects of the Act.</p> <p>Services Australia did not comply with its</p>	<ul style="list-style-type: none"> • Statement issued to staff highlighting Services Australia's obligations under the FOI Act • Services Australia to take an approach of interpreting the scope of FOI requests in a manner that seeks to facilitate access to information • Services Australia develop a policy that provides that where information that is subject to multiple FOI requests, it is uploaded onto the Department's disclosure log as soon as practicable. • Services Australia update its FOI manual to include references to recent Information Commissioner decisions and FOI Guidelines • Services Australia to update its FOI manual to include guidance about; s 16 transfers, provision of documents, disclosure log and factors to consider when deciding to impose a charge. • Services Australia within six months of these conclusions conduct audits on the following and report back to the OAIC; on interpretation of scope by officers and adherence to the consultation process under s 24AB. 		

Respondent	Issues	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response received	Status
				obligations under s 11C(6) of the FOI Act in relation to the maintenance of its disclosure log, by imposing a 30 day timeframe to respond to requests for access to documents held on the disclosure log. Services Australia's policies and procedures did not provide clear guidance on timeliness, transfer of requests, combining requests under s 24(2) and making a decision to impose a charge.	<ul style="list-style-type: none"> Services Australia to ensure processes are in place to assist applicants through the s 24AB consultation process that include the provision of a contact phone number. 		
Department of Home Affairs <ul style="list-style-type: none"> CP17/00725 CP17/02861 CP18/00258 CP18/00693 CP18/00822 CP18/00939 CP18/01059 CP18/01418 CP18/01419 	Compliance with statutory processing timeframes.	Non-personal	20 December 2019	The Department did not comply with s 15(5)(b) of the FOI Act as the Department did not provide the complainant with a decision in relation to their FOI requests within the relevant statutory	Information Commissioner deferred making any recommendations given the ongoing related CII. No response required.	N/A	No response required. Information Commissioner deferred making any recommendations given the ongoing related CII.

Respondent	Issues	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response received	Status
<ul style="list-style-type: none"> CP18/02340 CP18/02972 CP18/03072 				<p>processing timeframe.</p> <p>The Department did not comply with s 54C(3) of the FOI Act as the Department did not provide the complainant with a decision in relation to their internal review request within the relevant statutory processing timeframe.</p>			
<p>Services Australia</p> <ul style="list-style-type: none"> CP17/01984 	Use of practical refusal mechanism and conduct of internal review	Personal	18 February 2020	<p>1. The Department refused the request under s 24(1) of the FOI Act on the basis that a practical refusal reason exists as the work involved in processing the request would substantially and unreasonably divert the resources of the Department from its other operations (s 24AA(1)(a)(i)). The Department's decision was</p>	<p>No recommendations made. No response required.</p>	N/A	<p>No recommendations made. No response required</p>

Respondent	Issues	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response received	Status
				<p>maintained at internal review. The Department's internal review decision was subject to an Information Commissioner review. The Commissioner decided under s 55K of the FOI Act that a practical refusal reason did not exist.</p> <p>2. The Department's internal review process complied with s 54C of the FOI Act.</p>			
Airservices Australia	<p>Acknowledgment of FOI requests in accordance with statutory timeframes. Taking reasonable steps to conduct searches for documents within scope of the FOI request. Withholding documents which fell within the scope of the FOI request. Compliance with s 26 of the FOI Act.</p>	personal	23 April 2020	<p>At the time of the request, Airservices did not have a formalised process by which employees could access their personnel records. Airservices did not comply with ss 15(5)(a) and 26 of the FOI Act. During the processing of the request Airservices did not take</p>	<p>Four recommendations were made.</p> <ol style="list-style-type: none"> 1. Airservices to issue a statement to all staff reminding them of their obligations under the FOI Act 2. Airservices to establish a general FOI training program for inclusion in its induction process and finalise policies which outline the procedures to follow when processing an FOI request. 3. Airservices to write to each FOI applicant within the past 12 months of which the FOI complaint was made 	Audit due 22 October 2020	

Respondent	Issues	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response received	Status
				reasonable steps to identify documents within the scope of the request. Airservices reduced the scope of the FOI request without agreement from the applicant.	and advise them of their review rights. 4. Airservices to conduct an audit within 6 months to track compliance of: a) Policies and procedures and b) Section 26 Notices		
The Australian National University (the ANU)	Delay in processing FOI request Communication regarding the processing delays	Personal information	14 September 2020	The statutory timeframe was not extended by agreement under s 15AA, or as a result of consultation (ss 15(6), 15(8), 26A, 27, 27A), or under ss 15AB or 15AC. The ANU exceeded the statutory processing period by 26 days without authority. The ANU updated the complainant about the processing of the request and provided reasons for the delay.	1. The ANU should update its 'Guideline 1.15: Freedom of Information processing checklist' and 'Guideline 1.18: Freedom of Information request processing timeframes' to require staff to conduct an early assessment of whether an extension of time may be required and if so, to seek agreement from the FOI applicant to extend the processing period under s 15AA. 2. The ANU should update its 'Guideline 1.15: Freedom of Information request processing checklist' and 'Guideline 1.18: Freedom of Information request processing timeframes', to require staff to consider whether it is appropriate to seek an extension of time pursuant to s 15AB where an applicant has not agreed to extend the statutory processing period under s 15AA, or to seek an extension of time from the Information Commissioner under s 15AC where a decision about an FOI request has not been provided	Agree and recommendations implemented	Awaiting acquittal

Respondent	Issues	Type of FOI request	Date of Notice on completion	Outcome	Recommendations	Respondent's response received	Status
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to the applicant within the statutory processing period.

Commissioner brief: FOI Disclosure Logs [D2020/017452](#)

Key messages

- In October 2019, the OAIC began work on a desktop review of agency compliance with disclosure log obligations. A key focus of the review is whether agencies make documents directly available for download to members of the public.
- Our report is near finalisation and will be published soon.

Critical facts

- Section 11C of the FOI Act requires agencies to publish information released in response to FOI requests within 10 days of release to the FOI applicant, unless the documents contain personal or business information that it would be unreasonable to publish. Subsection 11C(3) provides three options for publication:
 1. directly on the agency's website
 2. linking to another website from which the information can be downloaded
 3. publishing details of how the information can be obtained on the agency's website.
- The FOI Guidelines state that publication of documents directly on an agency's website, rather than describing the documents and how they can be obtained on request, is consistent with the FOI Act object of facilitating access to government information. Further, the Explanatory Memorandum to the *Freedom of Information Amendment (Reform) Bill 2009* states that information is to be published to the public generally on a website, and it is only if the information cannot readily be published in that way that the website should give details of how the information can be obtained.
- In December 2018 and January 2019 an individual made FOI requests through the 'Right to Know' website to 12 Departments that do not make documents directly available through their disclosure logs, but which instead require an email to be sent requesting access. The individual sought access to all documents not directly available for download. Many Departments treated this as a formal request for access when a decision had already been made on access, imposed with charges and applied a 30-day processing period (in one case the agency asked for a 30-day extension to process the 'request'). Several Departments issued practical refusal notices.
- This issue was brought to our attention via social media and the 'Right to Know' website.
- The OAIC's desktop audit **assessed all Australian Government departments** (those subject to the FOI Act), as well as **the 20 agencies that receive the largest number of FOI requests** for non-personal information that result in release of documents.
- The desktop review assessed:
 - the form in which access is provided (directly on the website, linked to another website or on request)

- the adequacy of the description of the documents
- how documents are removed and archived on their disclosure log.
- While the report based on the desktop review is currently being finalised, the review found that most agencies are largely compliant with their disclosure log obligations. The report identifies the following issues:
 - almost 40% of reviewed agencies require members of the public to contact them for access to documents on their disclosure log. This places an unnecessary barrier to accessing government information.
 - all reviewed agencies include some information identifying the subject matter or content of documents on their disclosure logs. However, descriptions vary in the amount of detail provided which can make it difficult for members of the public to identify what the documents contain and whether to seek access.
 - almost 70% of the reviewed agencies do not publish a timeframe for the removal of documents from their disclosure log making it difficult for members of the public to know how long documents will remain on a disclosure log.
- The review will recommend that agencies work towards making documents available for download directly from their website, improving the description of documents on their disclosure log and provide clearer details about when documents will be removed from their active disclosure log.
- A report detailing the findings of the review is near finalisation and should be published soon.

Possible questions

- ***If the OAIC was aware of non-compliance with disclosure log obligations in January 2018, why is it only now that action is being taken?***

The OAIC has a number of regulatory functions and we need to ensure we are able to discharge all of these functions in an efficient and cost-effective way. During the last financial year (2019-20) the OAIC assigned specific resources to undertake the review, as well as working on other projects that promote proactive publication of information by Australian Government agencies.

- ***What agencies are the worst offenders?***

47E(d)

The report is near finalisation and will be published soon. The report will identify trends in agency disclosure log compliance but will not identify individual agencies.

- ***What action will you take in relation to agencies who are non-compliant with their statutory obligations?***

The OAIC will publish a report that includes trends and outcomes. We are using the information obtained during the review to update Part 14 of the FOI Guidelines

(Disclosure Log) to provide more guidance to agencies which will enable them to better meet their disclosure log obligations (for more information see Commissioner Brief - Changes to Disclosure Log Guidelines [D2020/017619](#)). We will take regulatory action if required. Further, we will work directly with agencies to ensure more government held information is made available to the Australian public.

Key dates

- December 2018/January 2019 – 12 FOI requests made to Australian Government Departments for access to documents not directly available for download from agency disclosure logs.
- October 2019 to December 2019 – desktop review conducted.

Document history

Updated by	Reason	Approved by	Date
Nikki Edwards	Senate Estimates October 2020	Raewyn Harlock	20.9.2020

Commissioner brief: FOI Act Reforms [D2020/000764](#)

Key messages

- The review of charges under the FOI Act published in 2012, and the Hawke Report into the FOI Act in 2013, identified a number of areas in which changes could be made to the FOI Act which will increase its ability to delivery transparency and accountability for the Australian public.
- The FOI Act provides a sound basis for providing access to government held information to the Australian public through formal FOI requests, the disclosure log and the Information Publication Scheme. 47C

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Critical facts

- **Charges review:** On 7 October 2011, the Minister for Privacy and Freedom of Information, the Hon Brendon O'Connor, issued terms of reference for a review of charges under the FOI Act. The Australian Information Commissioner issued a discussion paper on 31 October 2011, and received 23 submissions from agencies and applicants. The review report was published in February 2012. The review made ten recommendations for a new charges framework. These recommendations include encouraging administrative access; introducing discretionary FOI application fees to encourage people to use an administrative access scheme before resorting to the FOI Act; no FOI processing charge for first five hours and a flat \$50 fee for work between five and 10 hours; 40 hour ceiling on processing time (including for personal requests which are not subject to charges); specific access charges for activities such as supervising inspection; a reduction in charges for delayed processing; introduction of an IC review fee if the applicant does not first seek internal review, and indexation of all FOI fees and charges to the CPI.

The Executive Summary and Recommendations are at **Attachment A**. The OAIC's current position in relation to the recommendations made by the Information Commissioner in the Charges Review is at **Attachment B**.

- **Hawke review:** On 29 October 2012, the Attorney-General issued terms of reference for a review of the operation of the FOI and AIC Acts under s 93B of the FOI Act and s 33 of the AIC Act. On 1 July 2013, after considering 81 submissions, Dr Hawke finalised his 'Review of the *Freedom of Information Act 1982* and *Australian Information Commissioner Act 2010*'.

The Hawke Report concluded that the FOI reforms of 2010 were operating as intended and were generally well received, however many of the concerns raised in submissions were not directly addressed in the reform packages. The Hawke Report made 40 recommendations against seven broad themes; the FOI Act framework, the OAIC's structure and processes, the two-tier system of merits review, exemptions, FOI Act coverage, charges, regulatory and administrative burden. Dr Hawke also published a 'FOI Better Practice Guide' for Australian government agencies and practitioners.

The Executive Summary, including the 40 recommendations, is at **Attachment C**. The OAIC's submissions to the Hawke Report are at **Attachment D**.

- **Belcher Red Tape Review:** The 'Independent Review of Whole-of-Government Internal Regulation' (the Belcher Red Tape Review) was published in August 2015. This recommended that entities examine their FOI practices to ensure they impose the least burdensome mechanisms for responding to FOI requests and consider more active publication of information to decrease FOI requests. It also recommended that AGD consider whether the IPS could be consolidated with other government initiatives for enhancing public accessibility of government information, such as the digital transformation agenda.

To reduce the administrative burden on entities, AGD should reduce the frequency of reporting FOI matters from quarterly to annually and seek the Government's agreement to prioritise implementation of the Hawke report to reduce the regulatory burden and improve the operation of the FOI Act and consider issues raised about exemptions and the scope of access to information under the FOI Act to enhance its operation.

- **ANAO Review:** On 19 September 2017, the Australian National Audit Office published a report on *Administration of the Freedom of Information Act 1982*. This report reviewed the role of the OAIC and recommended that we develop an approach to verifying the quality of data input and develop and publish a statement of our regulatory approach. The audit also looked at how three entities (the Department of Veterans' Affairs, the Department of Social Services and the Attorney-General's Department) processed FOI requests. The report investigated the assistance provided to applicants, whether agencies conducted reasonable searches for documents, timeliness of decision making, the application of exemptions and whether internal reviews were conducted appropriately.

- **FOI Amendment Bill:** On 22 August 2018, Senator Rex Patrick introduced the *Freedom of Information Legislation Amendment (Improving Access and Transparency) Bill 2018* into the Senate. It was referred to Committee, which held a public hearing in Canberra on 16 November 2018. Nine submissions were received. The Committee issued its report on 30 November 2018 which did not recommend that the Senate pass the Bill. The Bill proposed the following amendments to the FOI Act:
 - require government to fill all three offices of the Australian Information Commissioner, the Privacy Commissioner and the Freedom of Information Commissioner.
 - add a new category of decision that may be appealed to the AAT and allow applicants to apply to the AAT for review of any IC reviewable decision without first going through the Information Commissioner review process. An applicant taking this option would pay the usual AAT application fee.
 - require the Information Commissioner to notify an IC review applicant if it is likely that more than 120 days will elapse before a decision under s 55K will be made, or that 120 days has elapsed since the IC review application was made. The Information Commissioner's notice must state that an application to transfer the IC review application to the AAT may be made to the OAIC.
 - require the consistent application of exemptions by decision makers in the context during IC review.
 - require the Information Commissioner and Privacy Commissioner to hold legal qualifications if making IC review decisions.
 - require publication of documents on a disclosure log between 10 and 14 working days after access is given.
 - require publication of all external legal expenses incurred in relation to FOI matters.
 - Senators and Members of the House of Representatives are not subject to FOI charges unless the work generated by an access application involves charges totalling more than \$1000.

There was a brief second reading debate of the bill on 31 August 2020, during which both Liberal and Labour Senators spoke against it.

- **Thodey Review of the APS:** In May 2018 the government commissioned an independent panel to review the Australian Public Service. The committee received more than 700 submissions. On 19 March 2019, a draft report, 'APS Review: Priorities for change', was published. One key priority identified was 'an open APS, accountable for sharing information and engaging widely' which draws on Australia's Open Government National Action plan and refers to New Zealand's decision to proactively release some traditionally confidential material.

On 13 December 2019, the *Independent Review of the Australian Public Service* was published. Relevantly, the review made the following recommendation:

Government to commission a review of privacy, FOI and record-keeping arrangements to ensure that they are fit for the digital age, by:

- supporting greater transparency and disclosure, simpler administration and faster decisions, while protecting personal data and other information, and
- exempting material prepared to inform deliberative processes of government from release under FOI.

The government did not agree to implement this recommendation. Government noted the recommendation, saying the government's principal focus is to ensure agencies effectively implement current requirements, addressing practical problems where required and that further reform would be considered separately to the Government's response to the APS Review.

- **Domestic and internal enforcement mechanisms:** A domestic and international comparison reveals the following legislative measures to address non-compliance by agencies following the exercise of enforcement powers by the regulator in reviewing FOI decisions:
 - reports to the Prime Minister/House of Representatives (New Zealand)
 - judicial review proceedings (New Zealand)
 - contempt of court proceedings (United Kingdom), and
 - summary offence proceedings with a maximum penalty of a \$1,000 fine (Canada).

A table setting out the relevant jurisdiction, legislation and enforcement mechanism is at **Attachment E**.

Possible questions

- ***Is the FOI Act working to achieve transparency and accountability in government?***

The FOI Act provides a sound basis for providing access to government held information to the Australian public, through formal FOI requests, the disclosure log and the Information Publication Scheme. ^{47C}

- ***What are your suggestions for improvement to the FOI Act?***

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- ***The media has reported that the Australian government is becoming more secretive. What are you doing to improve transparency and accountability in government?***

I continue to make IC review decisions which provide guidance to Australian Government agencies. We continue to update the FOI Guidelines. We are reviewing agency compliance with their disclosure log obligations. We completed a review of agency compliance with their IPS obligations in June 2019.

- ***What are your thoughts on the recommendation made by the Thodey review of the APS that material prepared to inform the deliberative processes of government should be exempt from release under the FOI Act?***

The deliberative processes conditional exemption in s 47C of the FOI Act protects information which relates to the opinions, advice or recommendations obtained, prepared or recorded, or consultation or deliberations that have taken place for the deliberative processes of an agency or a minister or the government. It does not apply to 'purely factual material'. In my view this exemption, which is subject to a public interest test, adequately protects the ability of government officials to develop policy, debate issues, and to brief ministers and government where appropriate.

The rights and interests of the Australian public would be significantly impacted if the deliberative processes of government are not subject to an overriding public interest test. It could undermine the objects of the FOI Act, which include that Australia's representative democracy is enhanced by increasing public participation in government processes with a view to promoting better informed decision making and increasing scrutiny, discussion, comment and review of the government's activities.

- ***Do you consider the FOI Act needs to be amended so that the FOI Act continues to apply when a Minister changes?***

The FOI Act gives a right of access to an 'official document of a minister'. Unless documents are required to be retained as National Archives, General Records Authority No. 38 provides they can be destroyed when the exiting Minister ceases to hold a ministerial post. If the documents are retained as National Archives, they will not be able to be accessed for 20 years - until the open access period commences.

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Key dates

- February 2012 – Australian Information Commissioner issues report into charges under the FOI Act.
- 22 May 2013 – Australia announces decision to join the Open Government Partnership.
- 1 July 2013 – Hawke Report into the operation of the FOI Act.
- August 2015 – Belcher red tape review published.
- 19 September 2017 – Australian National Audit Office publishes report '*Administration of the Freedom of Information Act 1982*'.
- 22 August 2018 – Senator Rex Patrick introduced *Freedom of Information Legislation Amendment (Improving Access and Transparency) Bill 2018* into the Senate.
- 13 December 2019 – Thodey review of Public Service and the government's response published.
- 31 August 2020 – Second reading debate of *Freedom of Information Legislation Amendment (Improving Access and Transparency) Bill 2018*, during which both Liberal and Labour Senators spoke against it.

Document history

Updated by	Reason	Approved by	Date
Nikki Edwards	Senate Estimates October 2020	Raewyn Harlock	29.9.2020

Attachment A**Review of charges under the Freedom of Information Act 1982****Executive summary and recommendations****Background to this inquiry**

The Freedom of Information Act 1982 (FOI Act), upon commencement in 1982, authorised agencies and ministers to impose charges for providing access to documents. The type and scale of charges were set out in the Freedom of Information (Charges) Regulations 1982 (Charges Regulations). In deciding on a charge an agency is to observe the stated objective of the FOI Act to facilitate public access to government information promptly and at the lowest reasonable cost (s 3(4)).

Changes have been made only four times to the charges provisions. The first change occurred in 1985 when an FOI application fee was introduced. Next, in 1986 a charge for decision making was introduced, and the current scale of charges was set. The third change was in 1991, when a cap was imposed on the charge that could be levied for a request for personal information. The most recent changes in 2010 were part of an extensive reform of the FOI Act, and were of two kinds: application fees were removed from FOI access requests, applications for internal review, and requests to amend or annotate personal records FOI charges were removed from access requests for personal information, for the first five hours of decision making time for other requests, and where an agency fails to notify a decision on a request within the prescribed processing period.

At the time of introducing these recent substantial reforms into the Parliament, the Government foreshadowed that it would ask the Australian Information Commissioner to review the charges regime within a year of the 2010 reforms commencing. This review commenced in October 2011, and involved publication of a discussion paper, consultation with the public and Australian Government agencies and advisory committees, and consideration of written submissions.

Main issues raised in inquiry

Issues that were highlighted by agencies in submissions and during consultations included:

- the suitability of the charges scale, which has not altered since 1986
- the need to simplify the charges framework
- the useful role that charges play in initiating a discussion with applicants about narrowing and refining the scope of broad requests, and the difficulties agencies face in using s 24AB of the FOI Act (the 'practical refusal' mechanism) to achieve the same effect
- the problem of large and complex applications from specific categories of applicants who use the FOI Act rather than rely upon other means to obtain information (such as law firms that use the FOI Act as a form of discovery, and members of parliament, journalists, researchers and the media)
- the need for further guidance from the OAIC regarding the application of the FOI Act provisions for waiving and reducing charges, particularly in assessing an applicant's claim of financial hardship or that disclosure would be in the public interest.

Applicants and members of the public, by contrast, emphasised the importance of:

- minimising cost barriers to the exercise of the democratic right of access conferred by the FOI Act
- ensuring that charges do not discriminate against economically disadvantaged applicants
- preventing the introduction of a full cost-recovery principle for FOI charging.

Various proposals for reform were made, including:

- simplifying the charges scale by combining some existing charges into a single hourly processing charge
- introducing a graduated charging scale under which the charge increases based on the time an agency spends in processing a request
- prescribing a ceiling on the amount of time an agency is required to spend on processing a request
- charging according to the amount of information released
- charging according to the category of applicant
- imposing an FOI application fee and abolishing all other processing charges.

Guiding principles to underpin a new charges framework

Fees and charges play an important role in the FOI scheme. It is appropriate that applicants can be required in some instances to contribute to the substantial cost to government of meeting individual document requests. Charges also play a role in balancing demand, by focusing attention on the scope of requests and regulating those that are complex or voluminous and burdensome to process.

On the other hand, full cost-recovery would be incompatible with the objects of the FOI Act and would strike unfairly against large sections of the community. This has been accepted during 30 years of the FOI Act, as the reported fees and charges collected by agencies represent only 2.08% of the estimated total cost of administering the FOI Act (1.68% in 2010–11). The FOI reform objective in 2010 was to further reduce the cost to the community of obtaining government information and to promote greater transparency in government.

A balance must be struck, but the current method in the FOI Act and Charges Regulations of striking that balance is inadequate. The charging framework is not easy to administer; charges decisions cause more disagreement between agencies and applicants than seems warranted; in some cases the cost of assessing or collecting a charge is higher than the charge itself; and the scale of charges is outdated and unrealistic.

This report proposes four principles to underpin a new charges framework:

- **Support of a democratic right:** Freedom of information supports transparent, accountable and responsive government. A substantial part of the cost should be borne by government.
- **Lowest reasonable cost:** No one should be deterred from requesting government information because of costs, particularly personal information that should be provided free of charge. The scale of charges should be directed more at moderating unmanageable requests.
- **Uncomplicated administration:** The charges framework should be clear and easy for agencies to administer and applicants to understand. The options open to an applicant to reduce the charges payable should be readily apparent.
- **Free informal access as a primary avenue:** The legal right of access to documents is important but should supplement other measures adopted by agencies to publish information and make it available upon request.

Recommendations for a new charges framework

Recommendations are made in Part 5 of this report to replace the current charges framework in the FOI Act and Charges Regulations with a new framework that can be summarised as follows:

1. **Administrative access:** agencies are encouraged to establish administrative access schemes that enable people to request access to information or documents that are open to release under the FOI Act. A

scheme should be set out on an agency's website and explain that information will be provided free of charge (except for reasonable reproduction and postage costs).

2. **FOI application fees:** to encourage people to use an administrative access scheme prior to using the FOI Act, an agency may in its discretion impose a \$50 application fee if a person makes an FOI request without first applying under an administrative access scheme that has been notified on an agency's website. A person who applies under an administrative access scheme and is not satisfied with the outcome or who is not notified of the outcome within 30 days may make an FOI request without paying an application fee. The agency's exercise of the discretion to impose a \$50 application fee would not be externally reviewable by the Information Commissioner (IC reviewable), nor subject to waiver on financial hardship or public benefit grounds.
3. **FOI processing charges:** no FOI processing charge should be payable for the first five hours of processing time (which includes search, retrieval, decision making, redaction and electronic processing). The charge for processing time that exceeds five hours but is less than 10 hours should be a flat rate of \$50. The charge for each hour of processing after the first 10 hours should be \$30 per hour.
4. **Ceiling on processing time:** an agency should not be required to process a request that is estimated to take more than 40 hours. The agency must consult with the applicant before making that decision. This ceiling will replace the practical refusal mechanism in ss 24, 24AA and 24AB. An agency decision to impose a 40-hour ceiling would not be IC reviewable, though the agency's 40-hour estimate would be reviewable.
5. **FOI access charges:** specific access charges should apply for other activities, such as supervising document inspection (\$30 per hour), providing information on electronic storage media (actual cost), postage (actual cost), printing (\$0.20 per page) and transcription (actual cost).
6. **Personal information:** there should be no processing charge for providing access to documents that contain an applicant's personal information, but personal information requests should be subject to the 40-hour ceiling applying to other requests.
7. **Waiver:** the specified grounds on which an applicant can apply for reduction or waiver of an FOI processing or access charge should be financial hardship to the applicant, or that release of the documents would be of special benefit to the public. An agency may waive a charge in full or by 50% or decide not to waive. An agency would also have a discretion not to impose or collect an FOI application fee or processing or access charge; the exercise of that general discretion would not be an IC reviewable decision.
8. **Reduction for delayed processing:** where an agency fails to notify a decision on a request within the prescribed statutory period, the FOI charge that is otherwise payable should be reduced by 25% if the delay is seven days or less, 50% if more than seven but up to and including 30 days, or 100% for a delay of more than 30 days.
9. **Review application fees:** there should be no application fee for internal review. Nor should there be an application fee for IC review, if an applicant first applies for internal review and is not satisfied with the decision or is not notified of a decision within 30 days. If an applicant applies directly for IC review when internal review was available, a fee of \$100 should be payable. The fee should not be subject to waiver.
10. **Indexation:** all FOI fees and charges should be adjusted every two years to match any Consumer Price Index change over that period, by rounding the fee or charge to the nearest multiple of \$5.

Explanation of the proposed changes

The proposed changes are explained fully in this report. The theme throughout is that applicants and agencies can equally benefit from a new charges framework that is clear, easy to administer and understand, encourages agencies to build an open and responsive culture, and provides a pathway for applicants to frame requests that can be administered promptly and attract little or no processing charge. There are three primary ways for bringing this change about.

The first is by encouraging agencies to develop, and applicants to use, administrative access schemes before resorting to the formal legal processes of the FOI Act. Administrative schemes can play a key role in meeting the objectives of the FOI Act. They can provide quick and informal information release in a way that can reduce the cost both to applicants and agencies. Importantly, they complement and do not detract from the legally enforceable right of access under the FOI Act. In fact, the discussion that occurs between applicants and agencies at the administrative access stage can assist the smooth operation of the FOI Act and bring about targeted and quicker document release if FOI processes are later used.

The second is by introducing a new scale of FOI charges that is clear and straightforward to administer. The new scale will markedly benefit applicants whose requests can be processed in less than 10 hours. Personal information requests will remain free of processing charges. A new ceiling of 40 hours on processing time would replace the 'practical refusal' mechanism in the FOI Act that makes it difficult to decide when a complex or voluminous request imposes an unreasonable administrative burden upon an agency. This will also provide a clear standard for deciding when consultation should occur between an agency and an applicant about revising and narrowing the scope of a request that appears unmanageably large.

The third is by reinforcing the important role that internal review can play in quickly and effectively resolving a disagreement between an applicant and an agency about a document request. Internal review is generally quicker than IC review and enables an agency to take a fresh look at its original decision. An applicant could still apply directly for IC review but would be required to pay an application fee of \$100 (subject to some exceptions). This proposal builds on a changing mood within government since the 2010 reforms to attribute greater importance to internal review and to treat it as a valuable step in resolving access requests.

Attachment B

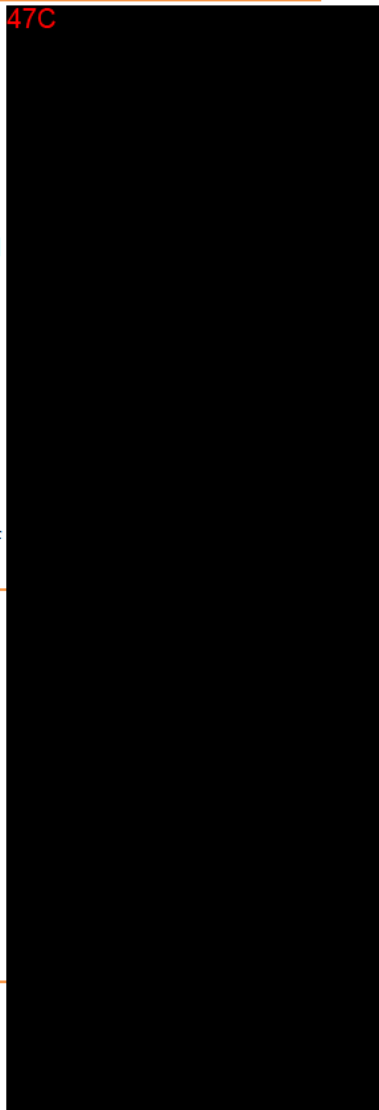
Review of charges under the Freedom of Information Act 1982: Report to the Attorney-General

In 2011 the former Australian Information Commissioner, Professor John McMillan undertook a review of the charges under the FOI Act. Terms of reference for the review were issued by the Minister for Privacy and Freedom of Information, the Hon Brendan O'Connor MP, on 7 October 2011.

In February 2012, the Australian Information Commissioner published a report with recommendations proposing that the current charges framework in the FOI Act and Charges Regulations is replaced with a new framework.

Considering the passage of time and current environment, many of the recommendations proposed in 2012 will need to be reviewed.

The Recommendations are as follows:

Recommendations	For consideration
<p>Recommendation 1 – Administrative access schemes</p> <p>1.1 Agencies are encouraged to establish administrative access schemes by which persons may request access to information or documents that are open to release under the FOI Act.</p> <p>1.2 The details of an administrative access scheme should be set out on an agency's website, and explain:</p> <ul style="list-style-type: none"> • how a person may make a request for information or documents that will be provided free of charge (except for reasonable reproduction and postage costs), and • the interaction of the administrative access scheme with the FOI Act. <p>1.3 If an agency establishes an administrative access scheme that is notified on its website, a person who makes an FOI request without first seeking the same information under the scheme may be required by the agency to pay an application fee of \$50.</p> <p>1.4 No FOI application fee shall be payable if a person has first applied under an appropriate administrative access scheme. The FOI request may be made either upon receipt of the agency's response to the administrative access request, or after 30 days if no agency response is received.</p>	<p>47C</p> 
<p>Recommendation 2 – FOI processing charges</p> <p>2.1 The FOI processing charges referred to in 2.3 and 2.4 should apply to all processing activities, including search, retrieval, decision making, redaction and electronic processing.</p> <p>2.2 No processing charge should be payable for the first five hours of processing time.</p> <p>2.3 The charge for processing time that exceeds five hours but is ten hours or less should be a flat rate charge of \$50.</p> <p>2.4 The charge for each hour of processing time after the first ten hours should be \$30 per hour (or part thereof).</p> <p>2.5 No processing charge should be payable for providing access to a document that contains the applicant's personal information.</p>	
<p>Recommendation 3 – FOI access charges</p> <p>3.1 Supervision of an applicant inspecting documents (or hearing or viewing an audio or visual recording) should be charged at \$30 per hour.</p> <p>3.2 Providing information on electronic storage media (such as a disk or USB drive) should be charged at actual cost.</p> <p>3.3 Postage costs should be charged at actual cost.</p> <p>3.4 Printing (including photocopying and other printed copying) should be charged at \$0.20 per page.</p> <p>3.5 Transcription should be charged at actual cost.</p>	

Recommendation 4 – FOI processing ceiling

4.1 An agency or minister should have a discretion to refuse to process a request for personal or non-personal information that is estimated to take more than 40 hours to process. While the estimate of time would be an IC reviewable decision, an agency decision not to process a request above the 40-hour ceiling would not be reviewable.

4.2 Before making a decision of that kind the agency or minister must advise the applicant of the estimated processing time and take reasonable steps to assist the applicant to revise the request so that it can be processed in 40 hours or less.

4.3 For the purposes of exercising this discretion, an agency or minister may treat two or more requests as a single request, as provided for in s 24(2) of the FOI Act.

4.4 The practical refusal mechanism in ss 24, 24AA and 24AB of the FOI Act should be repealed.

Recommendation 5: Reduction and waiver

5.1 The specified grounds on which an applicant can apply for reduction or waiver of an FOI processing or access charge (but not an FOI application fee) should be:

- that payment of all or part of the charge would cause financial hardship to the applicant, or
- that release of the documents requested by the applicant would be of special benefit to the public.

5.2 The options open to an agency should be to waive the charges in full, by 50% or not at all. The decision would be an IC reviewable decision.

5.3 An agency should also have a general discretion not to impose or collect an FOI application fee or processing or access charge, whether or not the applicant has requested it to do so. The exercise of that discretion should not be an IC reviewable decision.

Recommendation 6 – Reduction beyond statutory timeframe

6.1 Where an agency fails to notify a decision on a request within the statutory timeframe (including any authorised extension) the FOI charge that is otherwise payable by the applicant should be reduced:

- by 25%, if the delay is 7 days or less
- by 50%, if the delay is more than 7 days and up to and including 30 days
- by 100%, if the delay is longer than 30 days.

Recommendation 7 – Internal and IC review fees

7.1 No fee should be payable for an application for internal review.

7.2 No fee should be payable for an application for IC review of an internal review decision or a deemed affirmation on internal review.

7.3 An application fee of \$100 should be payable for IC review if an applicant who can apply for internal review has not done so first. The fee of \$100 should not be subject to reduction or waiver.

7.4 No fee should be payable for an application for IC review of a decision of a minister, the principal officer of an agency, or a deemed decision of an agency to refuse access to a document or to refuse to amend or annotate a personal record. No fee should also apply to an application for IC review by a third party of a decision to grant access to the FOI applicant.

Recommendation 8 – Indexation

8.1 All FOI fees and charges should be adjusted every two years to match any change over that period in the Consumer Price Index, by rounding the fee or charge to the nearest multiple of \$5.00.

Recommendation 9 – Responding to an agency decision

9.1 An applicant should be required to respond within 30 days after receiving a notice under s 29(8), advising of a decision to reject wholly or partly the applicant's contention that a charge should not be reduced or not imposed. The applicant's response should agree to pay the charge, seek internal review of the agency's decision or withdraw the FOI request.

9.2 If an applicant fails to respond within 30 days (or such further period allowed by an agency) the FOI request should be deemed to be withdrawn.

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Review of the *Freedom of Information Act 1982* and *Australian Information Commissioner Act 2010* (Hawke Report) (1 July 2013)

Executive Summary

This Review examined the *Freedom of Information Act 1982* (FOI Act) and *Australian Information Commissioner Act 2010* and the extent to which those Acts continue to provide an effective framework for access to government information. The Terms of Reference are at **Annex A**.

The FOI Act commenced on 1 December 1982. In 2009 and 2010, both the FOI Act and the processing and administrative framework were substantially amended by the *Freedom of Information (Removal of Conclusive Certificates and Other Measures) Act 2009*, *Freedom of Information Amendment (Reform) Act 2010*, *Australian Information Commissioner Act 2010*, and *Freedom of Information (Fees and Charges) Regulations 2010* (No. 1).

Submissions from 81 individuals, agencies, and organisations were considered (including confidential submissions) and consultations held with key stakeholders, including government agencies, academics, and public interest groups as part of this Review. Relevant reports by the Australian Law Reform Commission, Australian National Audit Office, Commonwealth Ombudsman, Office of the Australian Information Commissioner (OAIC), and the Senate Standing Committee on Legal and Constitutional Affairs were also taken into account. A list of submissions is at **Annex B**.

Summary of Findings

The Review finds that the reforms have been operating as intended and have been generally well-received.

Many concerns in submissions raised issues not directly addressed by the 2009 and 2010 reform packages.

Administration of FOI represents a significant cost and resource commitment for the Australian Government and its agencies. A key challenge for agencies, and for the OAIC, is to adopt and maintain practices to process FOI requests effectively and efficiently within their resources.

Legislative and administrative changes to streamline FOI procedures, reduce complexity and increase capacity to manage FOI workload both by agencies and the OAIC are recommended. The Review also recommends changes and adjustments to the operation of the exemptions, fees and charges, and coverage of specific agencies. In making these recommendations, the Review focussed on ensuring that the right of access to government information remains as comprehensive as possible.

There are exemptions for certain classes of documents and agencies. The Review believes that these are warranted despite their limiting effect on the release of government information. The most used exemption is the personal privacy exemption, being applied in 58% of cases where exemptions were used, or in 17.3% of FOI requests.

The deliberative processes exemption was applied in 1.5% of requests and the Cabinet documents exemption in 0.5% of requests. This suggests that the use of these two exemptions, contrary to some views, is at a very low level.

Guide to this Report

Chapter One provides background, including previous reviews and reports on Australia's federal FOI and the scope of this Review. It outlines the reforms to the framework as well as a brief description of the FOI process.

Chapter Two discusses the OAIC and examines its structure and processes, including the Advisory Committees. Resourcing and suggestions to alleviate particular issues faced by the OAIC are explored.

Chapter Three addresses the background to and effectiveness of the new two-tier system of merits review. Specific suggestions for improvements made by submissions are considered.

Chapter Four explores reformulation of the FOI Act exemptions. It examines both the principles and practical reasons for and effect of the existing exemptions and the impact of abolishing conclusive certificates.

Chapter Five looks at the specific agencies covered by the FOI Act and those that are exempt. It examines application of the FOI Act to the Parliamentary Departments as well as considering whether the range of documents covered by exemptions makes agency exemptions necessary.

Chapter Six examines the effectiveness of the FOI fees and charges framework and the OAIC's recommendations in its FOI Charges Review.

Chapter Seven considers the FOI regulatory and administrative burden, including discussion of best practice initiatives and recommendations to enhance administration of the FOI Act at an agency level, including time limits and practical refusal mechanisms.

Chapter Eight sets out some conclusions.

Recommendations

Chapter 1: Introduction

Recommendation 1 – Further Comprehensive Review

1(a) The Review recommends that a comprehensive review of the FOI Act be undertaken.

1(b) This review might also consider interaction of the FOI Act with the *Archives Act 1983*, *Privacy Act 1988* and other related legislation.

Chapter 2: Office of the Australian Information Commissioner (OAIC)

Recommendation 2 – Online Status of FOI Reviews and Complaints

The Review recommends the OAIC consider establishing an online system which enables agencies and applicants involved in a specific FOI review or FOI complaint investigation to monitor progress of the review or complaint.

Chapter 3: Effectiveness of the New Two-Tier System of Review

Recommendation 3 – Delegation of Functions and Powers

The Review recommends that section 25 of the *Australian Information Commissioner Act 2010* be amended to allow for the delegation of functions and powers in relation to review of decisions imposing charges under section 29 of the FOI Act.

Recommendation 4 – Power to Remit Matters to Decision-maker for Further Consideration

The Review recommends the FOI Act be amended to provide an express power for the Information Commissioner to remit a matter for further consideration by the original decision-maker.

Recommendation 5 – Resolution of Applications by Agreement

The Review recommends the FOI Act be amended to make it clear that an agreed outcome finalises an Information Commissioner review and, in these circumstances, a written decision of the Information Commissioner is not required.

Recommendation 6 – Third Party Review Rights

The Review recommends the FOI Act be amended to provide that only the applicant and the respondent are automatically a party to an Information Commissioner review. Any other affected person would be able to apply to be made a party to the review.

Recommendation 7 – Extensions of Time

The Review recommends the FOI Act be amended to:

- remove the requirement to notify the OAIC of extensions of time by agreement; and
- restrict the OAIC's role in approving extensions of time to situations where an FOI applicant has sought an Information Commissioner review or made a complaint about delay in processing a request.

Recommendation 8 – Agreement to Extension of Time Beyond 30 Days

The Review recommends that section 15AA of the FOI Act be amended to provide an agency or minister can extend the period of time beyond an additional 30 working days with the agreement of the applicant.

Recommendation 9 – Extension of Time for Consultation on Cabinet-related Material

9(a) The Review recommends the FOI Act be amended to allow an agency to extend the period of time for notifying a decision on an FOI request by up to 30 working days where consultation with the Department of the Prime Minister and Cabinet on any Cabinet-related material is required.

9(b) The Cabinet Handbook should be revised to accord with this recommendation.

Recommendation 10 – Two-Tier External Review

The Review recommends that the two-tier external review model be re-examined as part of the comprehensive review of the FOI Act.

Chapter 4: Reformulation of the FOI Act Exemptions**Recommendation 11 – Law Enforcement and Public Safety**

The Review recommends the exemption for documents affecting the enforcement of law and protection of public safety in section 37 of the FOI Act be revised to include the conduct of surveillance, intelligence gathering and monitoring activities. This revision should also cover the use of FOI as an alternative to discovery in legal proceedings or investigations by regulatory agencies.

Recommendation 12 – Cabinet Documents

The Review recommends the exemption for Cabinet documents be clarified by including definitions of 'consideration' and 'draft of a document'.

Recommendation 13 – Ministerial Briefings

The Review recommends that the FOI Act be amended to include a conditional exemption for incoming government and incoming minister briefs, question time briefings and estimates hearings briefings.

Recommendation 14 – Information as to Existence of Documents

The Review recommends that section 25 of the FOI Act be amended to cover the Cabinet exemption.

Chapter 5: Consideration of Specific Agencies Covered by the FOI Act**Recommendation 15 – Parliamentary Departments**

The Review recommends the FOI Act be amended to make the Department of the Senate, the Department of the House of Representatives and the Department of Parliamentary Services subject to the FOI Act only in relation to documents of an administrative nature. The FOI Act should also be amended to provide an exclusion for the Parliamentary Librarian.

Recommendation 16 – Exclusion of Australian Crime Commission from the FOI Act

The Review recommends the Australian Crime Commission be excluded from the operation of the FOI Act. Section 7(2A) of the FOI Act should be amended to refer to an 'intelligence agency document' of the Australian Crime Commission.

Recommendation 17 – Review of Agencies Listed in Part I of Schedule 2 to the FOI Act

- 17(a)** The Review recommends the intelligence agencies remain in Part I of Schedule 2 to the FOI Act. The parts of the Department of Defence listed in Division 2 of Part I of Schedule 2 should also remain.
- 17(b)** All other agencies currently in Part I of Schedule 2 should justify their exclusion from the FOI Act to the satisfaction of the Attorney-General. If they do not do this within 12 months, they should be removed.
- 17(c)** The Attorney-General should also consider whether there is a need to include any other agencies in Schedule 2.

Recommendation 18 – Criteria for Assessment of Agencies Exempt in Respect of Particular Documents

The Review recommends the FOI Act contain criteria for assessment of agencies which are exempt from the FOI Act in respect of particular documents.

Recommendation 19 – Review of Agencies Listed in Part II of Schedule 2 to the FOI Act

- 19(a)** The Review recommends Section 47 of the FOI Act be amended to make clear that it applies to documents that contain information about the competitive or commercial activities of agencies.
- 19(b)** All agencies in Part II of Schedule 2 to the FOI Act should justify their exclusion from the FOI Act to the satisfaction of the Attorney-General. If they do not do so, they should be removed from Part II of Schedule 2.
- 19(c)** The Attorney-General should also consider whether there is a need to include any other agencies in Part II of Schedule 2.

Recommendation 20 – Review of Agencies Listed in Schedule 1 to the FOI Act

- 20(a)** The Review recommends Schedule 1 to the FOI Act be amended to repeal the bodies listed, as they no longer exist.
- 20(b)** The Attorney-General should also consider whether there is a need to include any tribunals, authorities or bodies in Schedule 1.

Chapter 6: Fees and Charges**Recommendation 21 – Administrative Access Schemes**

- 21(a)** The Review recommends the OAIC consider the development of appropriate guidance and assistance to encourage agencies to develop administrative access schemes.
- 21(b)** While the Review acknowledges the desirability of encouraging the use of administrative access schemes, it does not believe it appropriate for this to be done by reintroduction of application fees for FOI requests.

Recommendation 22 – FOI Processing Charges

- 22(a)** The Review recommends that a flat rate processing charge should apply to all processing activities, including search, retrieval, decision-making, redaction and electronic processing. No charge should be payable for the first five hours of processing time. Processing time that exceeds five hours but is ten hours or less should be charged at a flat rate of \$50. The charge for each hour of processing time after the first ten hours should be \$30 per hour.
- 22(b)** The current provisions for no processing charges for access to an applicant's personal information and for waiver of charges should continue to apply.

Recommendation 23 – FOI Access Charges

- 23(a)** The Review recommends that a flat rate access charge should apply to all access supervision activities of \$30 per hour and that no other access charges should apply.
- 23(b)** The current provisions for no charges for access to an applicant's personal information and for waiver of charges should continue to apply.

Recommendation 24 – Ceiling on Processing Time for FOI requests

The Review recommends introduction of a 40-hour processing time ceiling for FOI requests.

Recommendation 25 – Reduction and Waiver of FOI Charges

- 25(a)** The Review recommends that an agency should be able to waive or reduce charges in full, by 50% or not at all. However, it considers that it would be better for these options to be set out in guidelines rather than in the FOI Act itself and recommends the OAI consider amending its guidelines accordingly.
- 25(b)** The Review believes that the current requirement to consider whether access to a document would be in the general public interest or in the interest of a substantial section of the public should remain unchanged.

Recommendation 26 – Reduction Beyond Statutory Timeframe

- 26(a)** The Review recommends adoption of a sliding scale for reduction of charges where decisions are not notified within statutory timeframes in accordance with recommendation 6 of the FOI Charges Review.
- 26(b)** No charge should be payable if the delay is longer than 30 working days.

Recommendation 27 – Application Fees for Information Commissioner Review for Review of Access to Non-personal Information

- 27(a)** The Review recommends that an application fee of \$400 apply for a review of an FOI decision for access to non-personal information. This fee would be reduced to \$100 in cases of financial hardship.
- 27(b)** If proceedings terminate in a matter favourable to the applicant, a \$300 refund would apply. There would be no refund of the reduced fee.
- 27(c)** No fee would apply for an Information Commissioner review of an access grant decision by an affected third party.
- 27(d)** In all other cases, fees would be payable for Information Commissioner review of decisions for access to non-personal information.
- 27(e)** There would be no remission of the fee where an applicant has first sought internal review or where internal review is not available.

Recommendation 28 – Indexation of Fees and Charges

The Review recommends that all fees and charges are adjusted every two years in accordance with the CPI based on the federal courts/AAT provision for biennial fee increases.

Recommendation 29 – Timeframes for Applicants to Respond to Agency Decisions

- 29(a)** The Review recommends that an applicant should be required to respond within 30 working days after receiving a notice under section 29(8), advising of a decision to reject wholly or partly the applicant's contention that a charge should not be reduced or not imposed. The applicant's response should agree to pay the charge, seek internal review of the agency's decision or withdraw the FOI request.
- 29(b)** If an applicant fails to respond within 30 working days (or such further period allowed by an agency) the FOI request should be deemed to be withdrawn.

Chapter 7: Minimising Regulatory Burden on Agencies**Recommendation 30 – Practical Refusal Mechanism**

The Review recommends section 24AA(1)(b) of the FOI Act be repealed to make it clear that the practical refusal mechanism can only be used after an applicant has provided information to identify the documents sought.

Recommendation 31 – Time Periods in the FOI Act to be Specified in Working Days

- 31(a)** The Review recommends that where appropriate, the FOI Act be amended so that time periods are specified in terms of 'working days' rather than calendar days.
- 31(b)** The timeframe for processing an FOI request (not taking into account any extensions of time) should be 30 working days. Provision should be made to exclude any period in which an agency is closed such as during the 'shut-down' period between Christmas and New Year.

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The Review recommends that there should be a period of five working days before documents released to an applicant are published on the disclosure log. However, it considers that it would be better for this to be set out in guidelines rather than in the FOI Act itself and recommends the OAIC consider amending its guidelines accordingly.

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The Review recommends the Government consider issues concerning the interaction of the FOI Act and the potential impact that publication of third-party material under the FOI Act may have on a copyright owner's revenue or market.

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The Review recommends the FOI Act be amended so that a search of a backup system is not required, unless the agency or minister searching for the document considers it appropriate to do so.

Recommendations

For consideration

Recommendation 1 – Further Comprehensive Review

- 1(a) The Review recommends that a comprehensive review of the FOI Act be undertaken.
- 1(b) This review might also consider interaction of the FOI Act with the *Archives Act 1983*, *Privacy Act 1988* and other related legislation.

Recommendation 2 – Online Status of FOI Reviews and Complaints

The Review recommends the OAIC consider establishing an online system which enables agencies and applicants involved in a specific FOI review or FOI complaint investigation to monitor progress of the review or complaint.

Recommendation 3 – Delegation of Functions and Powers

The Review recommends that section 25 of the *Australian Information Commissioner Act 2010* be amended to allow for the delegation of functions and powers in relation to review of decisions imposing charges under section 29 of the FOI Act.

Recommendation 4 – Power to Remit Matters to Decision-maker for Further Consideration

The Review recommends the FOI Act be amended to provide an express power for the Information Commissioner to remit a matter for further consideration by the original decision-maker.

Recommendation 5 – Resolution of Applications by Agreement

The Review recommends the FOI Act be amended to make it clear that an agreed outcome finalises an Information Commissioner review and, in these circumstances, a written decision of the Information Commissioner is not required.

Recommendation 6 – Third Party Review Rights

The Review recommends the FOI Act be amended to provide that only the applicant and the respondent are automatically a party to an Information Commissioner review. Any other affected person would be able to apply to be made a party to the review.

Recommendation 7 – Extensions of Time

The Review recommends the FOI Act be amended to:

- remove the requirement to notify the OAIC of extensions of time by agreement; and
- restrict the OAIC's role in approving extensions of time to situations where an FOI applicant has sought an Information Commissioner review or made a complaint about delay in processing a request.

Recommendation 8 – Agreement to Extension of Time Beyond 30 Days

The Review recommends that section 15AA of the FOI Act be amended to provide an agency or minister can extend the period of time beyond an additional 30 working days with the agreement of the applicant.

Recommendation 9 – Extension of Time for Consultation on Cabinet-related Material

- 9(a) The Review recommends the FOI Act be amended to allow an agency to extend the period of time for notifying a decision on an FOI request by up to 30 working days where consultation with the Department of the Prime Minister and Cabinet on any Cabinet-related material is required.
- 9(b) The Cabinet Handbook should be revised to accord with this recommendation.

Recommendation 10 – Two-Tier External Review

The Review recommends that the two-tier external review model be re-examined as part of the comprehensive review of the FOI Act.

Recommendation 11 – Law Enforcement and Public Safety

The Review recommends the exemption for documents affecting the enforcement of law and protection of public safety in section 37 of the FOI Act be revised to include the conduct of surveillance, intelligence gathering and monitoring activities. This revision should also cover the use of FOI as an alternative to discovery in legal proceedings or investigations by regulatory agencies.

Recommendation 12 – Cabinet Documents

The Review recommends the exemption for Cabinet documents be clarified by including definitions of 'consideration' and 'draft of a document'.

Recommendation 13 – Ministerial Briefings

The Review recommends that the FOI Act be amended to include a conditional exemption for incoming government and incoming minister briefs, question time briefings and estimates hearings briefings.

Recommendation 14 – Information as to Existence of Documents

The Review recommends that section 25 of the FOI Act be amended to cover the Cabinet exemption.

Recommendation 15 – Parliamentary Departments

The Review recommends the FOI Act be amended to make the Department of the Senate, the Department of the House of Representatives and the Department of Parliamentary Services subject to the FOI Act only in relation to documents of an administrative nature. The FOI Act should also be amended to provide an exclusion for the Parliamentary Librarian.

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Recommendation 16 – Exclusion of Australian Crime Commission from the FOI Act

The Review recommends the Australian Crime Commission be excluded from the operation of the FOI Act. Section 7(2A) of the FOI Act should be amended to refer to an ‘intelligence agency document’ of the Australian Crime Commission.

Recommendation 17 – Review of Agencies Listed in Part I of Schedule 2 to the FOI Act

- 17(a) The Review recommends the intelligence agencies remain in Part I of Schedule 2 to the FOI Act. The parts of the Department of Defence listed in Division 2 of Part I of Schedule 2 should also remain.
- 17(b) All other agencies currently in Part I of Schedule 2 should justify their exclusion from the FOI Act to the satisfaction of the Attorney-General. If they do not do this within 12 months, they should be removed.
- 17(c) The Attorney-General should also consider whether there is a need to include any other agencies in Schedule 2.

Recommendation 18 – Criteria for Assessment of Agencies Exempt in Respect of Particular Documents

The Review recommends the FOI Act contain criteria for assessment of agencies which are exempt from the FOI Act in respect of particular documents.

Recommendation 19 – Review of Agencies Listed in Part II of Schedule 2 to the FOI Act

- 19(a) The Review recommends Section 47 of the FOI Act be amended to make clear that it applies to documents that contain information about the competitive or commercial activities of agencies.
- 19(b) All agencies in Part II of Schedule 2 to the FOI Act should justify their exclusion from the FOI Act to the satisfaction of the Attorney-General. If they do not do so, they should be removed from Part II of Schedule 2.
- 19(c) The Attorney-General should also consider whether there is a need to include any other agencies in Part II of Schedule 2.

Recommendation 20 – Review of Agencies Listed in Schedule 1 to the FOI Act

- 20(a) The Review recommends Schedule 1 to the FOI Act be amended to repeal the bodies listed, as they no longer exist.
- 20(b) The Attorney-General should also consider whether there is a need to include any tribunals, authorities or bodies in Schedule 1.

Recommendation 21 – Administrative Access Schemes

- 21(a) The Review recommends the OAIC consider the development of appropriate guidance and assistance to encourage agencies to develop administrative access schemes.
- 21(b) While the Review acknowledges the desirability of encouraging the use of administrative access schemes, it does not believe it appropriate for this to be done by reintroduction of application fees for FOI requests.

Recommendation 22 – FOI Processing Charges

- 22(a) The Review recommends that a flat rate processing charge should apply to all processing activities, including search, retrieval, decision-making, redaction and electronic processing. No charge should be payable for the first five hours of processing time. Processing time that exceeds five hours but is ten hours or less should be charged at a flat rate of \$50. The charge for each hour of processing time after the first ten hours should be \$30 per hour.
- 22(b) The current provisions for no processing charges for access to an applicant’s personal information and for waiver of charges should continue to apply.

Recommendation 23 – FOI Access Charges

- 23(a) The Review recommends that a flat rate access charge should apply to all access supervision activities of \$30 per hour and that no other access charges should apply.
- 23(b) The current provisions for no charges for access to an applicant’s personal information and for waiver of charges should continue to apply.

Recommendation 24 – Ceiling on Processing Time for FOI requests

The Review recommends introduction of a 40-hour processing time ceiling for FOI requests.

Recommendation 25 – Reduction and Waiver of FOI Charges

- 25(a) The Review recommends that an agency should be able to waive or reduce charges in full, by 50% or not at all. However, it considers that it would be better for these options to be set out in guidelines rather than in the FOI Act itself and recommends the OAIC consider amending its guidelines accordingly.
- 25(b) The Review believes that the current requirement to consider whether access to a document would be in the general public interest or in the interest of a substantial section of the public should remain unchanged.

Recommendation 26 – Reduction Beyond Statutory Timeframe

26(a) The Review recommends adoption of a sliding scale for reduction of charges where decisions are not notified within statutory timeframes in accordance with recommendation 6 of the FOI Charges Review.

26(b) No charge should be payable if the delay is longer than 30 working days.

Recommendation 27 – Application Fees for Information Commissioner Review for Review of Access to Non-personal Information

27(a) The Review recommends that an application fee of \$400 apply for a review of an FOI decision for access to non-personal information. This fee would be reduced to \$100 in cases of financial hardship.

27(b) If proceedings terminate in a matter favourable to the applicant, a \$300 refund would apply. There would be no refund of the reduced fee.

27(c) No fee would apply for an Information Commissioner review of an access grant decision by an affected third party.

27(d) In all other cases, fees would be payable for Information Commissioner review of decisions for access to non-personal information.

27(e) There would be no remission of the fee where an applicant has first sought internal review or where internal review is not available.

Recommendation 28 – Indexation of Fees and Charges

The Review recommends that all fees and charges are adjusted every two years in accordance with the CPI based on the federal courts/AAT provision for biennial fee increases.

Recommendation 29 – Timeframes for Applicants to Respond to Agency Decisions

29(a) The Review recommends that an applicant should be required to respond within 30 working days after receiving a notice under section 29(8), advising of a decision to reject wholly or partly the applicant's contention that a charge should not be reduced or not imposed. The applicant's response should agree to pay the charge, seek internal review of the agency's decision or withdraw the FOI request.

29(b) If an applicant fails to respond within 30 working days (or such further period allowed by an agency) the FOI request should be deemed to be withdrawn.

Recommendation 30 – Practical Refusal Mechanism

The Review recommends section 24AA(1)(b) of the FOI Act be repealed to make it clear that the practical refusal mechanism can only be used after an applicant has provided information to identify the documents sought.

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Attachment D**OAIC's submission to the Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010 (Hawke Report)**

Please note that in light of the passage of time and current environment, the OAIC's current position may differ from the position in 2012. Similarly, the OAIC's consideration of recommendations proposed by the Hawke Review may need to be reviewed to reflect the current environment.

The OAIC's submissions to the Hawke Review of freedom of information legislation (December 2012) included the following suggestions for reform that would help improve efficiency of the IC review process/OAIC functioning.

- Remove Part V of the FOI Act so the Privacy Act provides the sole mechanism for amendment requests.
- Remove the prohibition in the AIC Act on delegation of the IC review decision-making power under s 55K of the FOI Act.
- Remove the barrier to delegation of Information Commissioner complaint handling powers.
- Authorise the Information Commissioner to remit a matter to an agency or minister for reconsideration.
- Broaden the grounds on which the Information Commissioner can decide not to undertake an IC review.
- Broaden the grounds on which the Information Commissioner can decide not to investigate a complaint.
- Provide a clearer mandate and powers for the Information Commissioner to resolve IC review applications by agreement between the parties to a review.
- Remove the requirement in s 15AA to notify the OAIC of extensions of time by agreement and otherwise limit the OAIC's role in approving extensions of time to situations where an FOI applicant has sought IC review or lodged a complaint about delay processing a request.
- Reduce the use of the FOI process for legal discovery by means such as introducing a 40-hour cap on processing time or by adopting the Queensland model where access may be refused if the document can be accessed under another Act or under arrangements made by an agency, whether or not access is subject to a fee or charge.
- Introduce a partial exemption under the FOI Act for the OAIC in respect of the OAIC's merits review and complaint functions.
- Amend the FOI Act so that an agency may refuse to process a request if, after having assisted the applicant to clarify the scope of the request, the processing time would exceed 40 hours.
- Consider whether action needs to be taken regarding the timing of disclosure log publication, in particular considering the issues potentially affecting the use of the FOI Act by applicants with a special interest in being granted access to documents prior to publication on an agency or ministerial disclosure log.

In 2013, the OAIC considered a range of recommendations made in the Hawke Report and either supported or did not oppose the following suggestions for change (selected because they may impact on the efficiency of the IC review/complaint handling processes).

- Limiting access when information is available free of charge, or when information that would substantially address the subject matter of the request is regularly made publicly available, in annual reports or otherwise, within a certain timeframe and revise the disclosure log requirements to expressly require publication of the terms of an FOI request (Neutral/could support but need more information).
- Streamline FOI processing and access charges, including indexation of fees and charges (Neutral/could support, more information needed).
- Provide that a search of backup tapes is not required unless the agency or minister considers it appropriate ((Neutral/could support, more information needed).

- Amend the FOI Act to provide for the delegation of the Information Commissioner's powers in charges decision (Support).
- Give the Information Commissioner power to remit matters to the original decision maker for further consideration (Support).
- Allow for the resolution of applications by agreement without requiring a formal IC decision (Support).
- Only the applicant and respondent are automatically parties to an IC review (other affected persons can apply to be made parties) (Support).
- Clarify the operation of the IC's discretion to decide not to undertake an IC review if the AAT is dealing with, or has dealt with, the matter (Support).
- Clarify s 54W(b) to include factors to take into account when considering whether it is in the interests of the administration of the FOI Act for the IC review to be considered by the AAT. Factors identified include if matter is complex or resource intensive; whether the decision was made by a minister or the principal officer of the agency; or whether the decision refusing access concerns national security or cabinet documents (Neutral/could support – question need for change).

Attachment E

Table setting out the relevant jurisdiction, legislation and enforcement mechanism

FOI jurisdiction	Agency and Legislation	Enforcement mechanisms during and after reviews of FOI decisions / complaints	Addressing non-compliance
Australia	OAIC Freedom of Information Act 1982	<p>IC reviews</p> <ul style="list-style-type: none"> - Power to issue a direction – s 55(2)(e) - Requirement for decision-maker to assist Information - Commissioner – s 55DA - Requirement to provide statement of reasons – s 55E - Obligation to comply with IC review decision – s 55N - Power to require production of information and documents – s 55R - Power to require further searches to be conducted – s 55V - Power to require a person to appear and answer questions – s 55W - Power to administer an oath or examine a person on oath or affirmation – s 55X <p>FOI Complaints</p> <ul style="list-style-type: none"> - Power to require production of information and documents – s 79 - Power to require persons to appear – s 82 - Power to administer an oath or examine a person on oath or affirmation – s 83 - Power to give implementation notice – s 89 	<p>IC reviews</p> <p>Non-compliance with s 55N, the IC can apply to the Federal Court for an order directing the agency to comply (s 55P)</p> <p>Non-compliance with s 55R, the penalty is imprisonment for 6 months.</p> <p>Non-compliance with s 55W, the penalty is imprisonment for 6 months.</p> <p>Non-compliance with s 55X, the penalty is imprisonment for 6 months.</p> <p>FOI Complaints</p> <p>Non-compliance with s 79, the penalty is imprisonment for 6 months.</p> <p>Non-compliance with s 82, the penalty is imprisonment for 6 months.</p> <p>Non-compliance with, the penalty is imprisonment for 6 months.</p> <p>Non-compliance with s 89, the Information Commissioner may give a written report to the responsible Minister and the FOI Minister (see s 89A). The FOI minister must cause the copy of the report to be laid before each House of Parliament.</p>
Australia	Queensland Right to Information Act 2009	<ul style="list-style-type: none"> - Power to require information, documents and attendance (s 103) - Power to examine witnesses (s 104) 	<p>Non-compliance with s 103, 100 penalty units (s 173).</p> <p>Non-compliance with s 104, 100 penalty units (s 177).</p>
Australia	Victoria	<ul style="list-style-type: none"> - Notice to produce or attend (s 61U) 	<p>Non-compliance with s 61U, 60 penalty units (s 61X).</p> <p>Non-compliance with s 61ZE, 60 penalty units (s 61ZE).</p>

FOI jurisdiction	Agency and Legislation	Enforcement mechanisms during and after reviews of FOI decisions / complaints	Addressing non-compliance
		- Power to take evidence on oath or affirmation (s 61ZE)	
New Zealand	<p>Ombudsman</p> <p>Official Information Act 1982</p> <p>Local Government Official Information and Meetings Act 1987</p>	<p>During the course of an investigation, agencies must comply with the Ombudsman's requests for information as soon as reasonably practicable and no later than 20 working days after the request is received, extensions of time can be applied for as prescribed (s 29A <i>Official Information Act</i>, s 29 <i>Local Government Official Information and Meetings Act</i>).</p> <p>The Ombudsman can make recommendations to agencies that become binding 21 working days after it is made and the agencies are under a 'public duty' to comply (s 32 <i>Official Information Act</i>, s 32 <i>Local Government Official Information and Meetings Act</i>).</p>	<p>Failures to comply with timeframes during the Ombudsman's investigation can be reported to the Prime Minister, and thereafter to the House of Representatives (s 29A <i>Official Information Act</i>, s 29 <i>Local Government Official Information and Meetings Act</i>).</p> <p>The Ombudsman has invited the Solicitor-General to enforce the public duty to comply with an Ombudsman's recommendation by initiating judicial review proceedings.</p>
United Kingdom	<p>Information Commissioner's Office</p> <p>Freedom of Information Act 2000</p>	<p>Information Commissioner can serve a notice requiring a public authority to provide information within a time specified in the notice (s 51 <i>Freedom of Information Act 2000</i>).</p> <p>Information Commissioner can serve an enforcement notice requiring a public authority to take steps to comply with the FOI Act if satisfied that there is non-compliance (s 52 <i>Freedom of Information Act 2000</i>).</p> <p>Information Commissioner can make a decision on whether a public authority has dealt with a request for information in accordance with Part I of the FOI Act (s 50 <i>Freedom of Information Act 2000</i>).</p>	<p>If there is non-compliance with a decision notice, information notice or enforcement notice, the Information Commissioner can certify in writing to the court that the public authority has failed to comply with the notice. The court can inquire into the matter and deal with the authority as if it had committed a contempt of court (s 54 <i>Freedom of Information Act 2000</i>).</p>
Canada	<p>Office of the Information Commissioner</p> <p>Access to Information Act 1985</p>	<p>The Information Commissioner has, in relation to the carrying out of the investigation of any complaint under this Part, power</p> <p>(a) to summon and enforce the appearance of persons before the Information Commissioner and compel them to give oral or written evidence on oath and to produce such documents and things as the</p>	<p>Persons who are found to have obstructed the Information Commissioner in the performance of duties and functions under the Act are guilty of an offence and liable on summary conviction to a fine not exceeding \$1000 (s 67 <i>Access to Information Act</i>).</p>

FOI jurisdiction	Agency and Legislation	Enforcement mechanisms during and after reviews of FOI decisions / complaints	Addressing non-compliance
		<p>Commissioner deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;</p> <p>(b) to administer oaths;</p> <p>(c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Information Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law;</p> <p>(d) to enter any premises occupied by any government institution on satisfying any security requirements of the institution relating to the premises;</p> <p>(e) to converse in private with any person in any premises entered pursuant to paragraph (d) and otherwise carry out therein such inquiries within the authority of the Information Commissioner under this Part as the Commissioner sees fit; and</p> <p>(f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter relevant to the investigation (s 36 <i>Access to Information Act</i>).</p> <p>The Information Commissioner may make an order if a complaint is found to be made out (s 36.1 <i>Access to Information Act</i>).</p>	

