



Attorney-General

Reference: MS23-000191

Ms Angelene Falk
Australian Information Commissioner
Privacy Commissioner
GPO Box 5218
SYDNEY NSW 2001

By email: [REDACTED]

Dear Ms Falk

I am writing to acknowledge the invaluable work of the Office of the Australian Information Commissioner (OAIC) as the independent national regulator for privacy and freedom of information, and to provide you with strategic direction in the form of the attached Ministerial Statement of Expectations (MSoE).

As outlined in the *Regulator Performance Resource Management Guide 128* (RMG 128),¹ while regulators are often operationally independent of government, this does not mean they are independent of expectations or guidance about how they fulfil their statutory roles. Commonwealth regulators are typically accountable to the Parliament, including through Senate Estimates and Australian National Audit Office scrutiny. Clear expectations from Government to regulators can help drive better regulator performance by providing an environment that supports the implementation of best practice.

Consistent with RMG 128, the enclosed Statement of Expectations outlines the principles I expect the OAIC to observe when regulating functions outlined above.

I would appreciate your response to this letter in the form of a Statement of Intent by the end of the transition period of 30 June 2023. The Statement of Intent should outline how the OAIC proposes to meet the expectations set out in the attached MSoE.

To ensure transparency and accountability, the MSoE and your responding Statement of Intent should be published and made available on your website by 30 June 2023. The statement should also be integrated into your performance reporting processes as required under the *Public Governance, Performance and Accountability Act 2013* as part of your 2023–24 corporate planning process and for your Annual Report prepared for the 2023–24 reporting period.

Thank you for your timely assistance with this matter.

Yours sincerely

[REDACTED]

THE HON MARK DREYFUS KC MP

9/3/2023

Encl. *Statement of Expectations*

¹ Available on the Department of Finance's website.

OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER

STATEMENT OF EXPECTATIONS – 2023

Ministerial Statements of Expectations provide greater clarity about government policies and objectives relevant to the regulator in line with its statutory objectives, and the priorities the Minister expects it to observe in conducting its operations. As the responsible Commonwealth Minister for the Office of the Australian Information Commissioner (OAIC) under the *Australian Information Commissioner Act 2010* (AIC Act), this statement sets out my expectations of the OAIC.

Overview

The OAIC is the independent national regulator for privacy and freedom of information.

Under the AIC Act, the OAIC's functions are as follows:

- privacy functions that are conferred by the *Privacy Act 1988* (Privacy Act) and other legislation, including:
 - resolving complaints about, investigating, determining, or commencing civil penalty proceedings in relation to, an act or practice that might breach the Privacy Act in response to a complaint or on the Commissioner's own initiative
 - conducting a privacy assessment of whether an entity is maintaining and handling personal information in accordance with the Privacy Act
 - involvement in code development
 - administering the eligible data breach notification scheme
 - directing an agency to give the OAIC a privacy impact assessment about a proposed activity or function
 - recognising external dispute resolution schemes to handle particular privacy-related complaints
 - providing information and advice on privacy to the Attorney-General, individuals, businesses and agencies
- oversight of the operation of the *Freedom of Information Act 1982* (FOI Act), reviewing decisions made by agencies and ministers under that Act, resolving FOI complaints and conducting investigations, including:
 - promoting awareness and understanding of the FOI Act among ministers, agencies and the community
 - providing FOI information, advice, assistance and training to ministers, agencies and the community
 - issuing guidelines on the interpretation and administration of the FOI Act (to which agencies and ministers must have regard when applying the FOI Act)
 - overseeing the Information Public Scheme, including assisting agencies to publish information under the scheme and reviewing agency compliance with the scheme
 - monitoring, investigating and reporting on compliance by agencies and ministers with the FOI Act
 - preparing an annual report on the basis of information and statistics collected from agencies and ministers

- investigating complaints from the public about FOI administration by agencies, and undertaking own motion investigation of agency actions; issuing an implementation notice (following an investigation) requiring an agency to specify the action it will take to implement the Commissioner's recommendations
- reviewing an agency's or minister's FOI request decision upon application from a person, and
- government information policy functions, including reporting to the Attorney-General on matters relating to Australian Government information management policy and practice, including FOI and privacy in relation to proposals for legislative change.

The Government recognises and respects the independence of the Australian Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner appointed under the AIC Act and their responsibility for regulation of privacy and freedom of information. I expect the OAIC to exercise its functions and powers in good faith and to the best of its ability.

The Government's policy priorities and objectives

In addition to the core functions noted above, the Government expects the OAIC to observe and contribute to the following Government priorities and objectives.

Regulatory reform agenda

The Government's regulatory reform agenda is a key component of the Government's plan to support economic recovery by working with States and Territories to effect regulatory reform to reduce duplication and boost productivity, and to account for impacts of regulation on individuals (not just businesses). Ensuring our regulatory settings are the best they can be helps boost productivity and competitiveness and supports well-functioning markets, business investment, job creation and growth.

Under the regulatory reform agenda, the Australian Government is also focusing on improving regulator performance, capability and culture through regulatory stewardship.

I expect the OAIC to contribute to the regulatory reform process by:

- seeking opportunities to remove duplication and streamline processes in order to improve efficiency and lift productivity,
- acting in accordance with regulator best practice in its decision-making, policies, processes and communication practices, in order to maximise transparency and minimise compliance costs,
- applying the Regulator Performance Resource Management Guide to its regulatory functions to assess its performance and engagement with stakeholders,
- incorporating regulator performance reporting into the entity's reporting processes, as required by the [*Regulator Performance Resource Management Guide \(December 2022\)*](#) under the *Public Governance, Performance and Accountability Act 2013* and *Public Governance, Performance and Accountability Rule 2014*, in order to support greater transparency and accountability of regulator performance.

Regulatory functions

I expect the OAIC to prioritise its regulatory functions, and ensure it is taking a contemporary and proportionate approach to its regulatory role in promoting and upholding Australia's privacy and freedom of information laws. I expect the OAIC to drive more efficient processes to ensure they can perform their regulatory functions more effectively, and to continue developing a capable, multidisciplinary workforce with a breadth of technical skills to provide guidance and advice, and to take appropriate regulatory action.

Privacy in the online environment

As the importance of the online environment increases for the economy, education and our social connections, I expect the OAIC to focus on regulatory activities to address privacy harms that arise from the practices of online platforms and services that impact individuals' choice and control, through opaque information sharing practices or terms and conditions of service. I expect the OAIC to promote awareness of privacy risks and provide guidance to individuals, organisations and agencies about how to protect personal information online. This will improve the ability of Australians to manage privacy choices online and improve protections for children and other vulnerable groups.

Consumer Data Right

As co-regulator of the Consumer Data Right system, I expect the OAIC to take an integrated approach to embedding compliance and enforcement policies, project planning and risk management activities. As the Consumer Data Right becomes more established and expands into more sectors, I expect the OAIC to bolster the guidance it provides to participants and consumers about the privacy safeguards in the system and how the OAIC will exercise its regulatory powers.

Principles of regulator best practice

Under the *Regulator Performance Resource Management Guide (December 2022)*, the principles of regulator best practice are:

1. **Continuous improvement and building trust:** regulators adopt a whole-of-system perspective, continuously improving their performance, capability and culture, to build trust and confidence in Australia's regulatory settings.
2. **Risk-based and data-driven:** regulators manage risks proportionately and maintain essential safeguards while minimising regulatory burden, and leveraging data and digital technology, to support those they regulate to comply and grow.
3. **Collaboration and engagement:** regulators are transparent and responsive communicators, implementing regulations in a modern and collaborative way.

Consequently, I expect the OAIC to:

- seek opportunities to engage and consult genuinely with stakeholders
- be receptive to feedback and diverse stakeholder views
- seek to increase transparency in decision-making processes, and
- provide up-to-date, clear and accessible guidance and information to assist regulated entities with compliance.

I expect the OAIC to embed and act in accordance with the Government's principles of regulator best practice when conducting its operations, as well as strive for continuous improvement against these principles.

In exercising its functions and powers in accordance with these principles, I expect the OAIC to:

- promote and regulate the protection of personal information, consistent with the objects of the Privacy Act
- promote and regulate access to information through the operation of the FOI Act and review decisions made by agencies and ministers under that Act, consistent with the objects of that Act
- promote a regulatory approach that facilitates voluntary compliance with privacy obligations, including:
 - engaging with regulated entities to provide guidance, promote best practice compliance, and identify and seek to address privacy concerns as they arise
 - engaging with regulated entities who notify the OAIC of a data breach incident to assist them to comply with their relevant reporting and privacy obligations
 - conducting an assessment of whether personal information is being maintained and handled by entities in accordance with obligations, and
 - promoting privacy impact assessments
- promote public confidence in the regulatory activities of the OAIC, by publicising actions taken to address privacy breaches and deal with entities that are not complying with privacy obligations
- ensure transparency and accountability around the OAIC's use of its regulatory powers including by publishing relevant guidance about the regulatory action it takes
- develop people, processes and systems that will allow the OAIC to conduct and finalise regulatory action as promptly as practicable
- support effective risk management and cultivate a positive risk culture by maintaining a Risk Management Framework
- use resources strategically to provide the greatest benefit for the community, and prioritise regulatory activities, and
- use resources and capability to contribute to significant government priorities involving personal information handling such as the Cyber Security and digital identity strategies and responses to the COVID-19 pandemic.

Innovation and regulatory change

I expect the OAIC to continually monitor the environment they operate in to ensure that regulatory approaches keep pace with changes in technology, industry practices and community expectations. I also expect the OAIC to regularly review and, where necessary, adjust policies, protocols and operating procedures, to ensure it can respond to the changing social, technological and commercial context in which it operates.

Relationship with Minister and portfolio

The OAIC plays an essential role in ensuring that I, as the Minister responsible for administering privacy and freedom of information laws, and the Government, are well placed

to respond promptly to privacy and freedom of information matters. The Attorney-General's Department (the department) also supports and advises me by providing advice on policy development and the performance of the portfolio's regulatory systems. The department takes into account the knowledge and expertise of the OAIC when considering changes to policy and legislation that impact on privacy and freedom of information matters.

Accordingly, I expect the OAIC to work collaboratively with the department to provide accurate and timely advice on significant issues relating to strengthening privacy and freedom of information matters.

As the responsible Minister, I will provide an enabling environment for the OAIC to consistently implement best practice by ensuring you are well informed of the Government's policy direction, as specific initiatives and strategies are being considered.