

Draft Senate Estimates opening statement – 3 March 2020

Thank you for the opportunity to make some opening remarks – I would like to briefly touch on:

- work my Office has been doing in resolving privacy complaints from members of the community
- how the Notifiable Data Breaches scheme is driving awareness of personal information security requirements and what to do after a breach
- our progress towards implementing the Consumer Data Right
- and our work to uphold and promote information access rights.

The Committee would be aware that in recent years there has been a significant increase in the volume of privacy complaints being made to my Office.

This reflects a heightened awareness of personal information issues in the community, as well as the increasing use of personal data as an input to business and government service delivery.

From 2015 to 2019, the number of incoming privacy complaints rose by 55 per cent.

Over this period, we sought to manage this increased workload through a range of strategies, including a greater focus on early resolution of matters.

However, while we did increase our throughput year on year, where matters could not be resolved through early resolution, the wait for allocation to an investigations officer had increased to more than 12 months.

This financial year we have been in a position to apply additional resources to this area and I'm pleased to report that our staff have made significant inroads into the backlog of cases, and we are continuing to reduce our average processing times. From July to December 2019, we closed 364 more privacy complaints than we received. This is the first time our closure rate has exceeded the rate of incoming complaints since the 2012-13 financial year.

We've focused on three key areas to achieve these results:

- streamlining processes and resetting timeframes for parties in managing incoming complaints, as part of our early resolution approach
- setting up specialist teams to target and conciliate older and more complex complaints
- establishing a new determinations team to progress matters to a Commissioner decision, where conciliation could not be achieved within the first eight weeks.

In the first three months of this project, from November to January, we closed more than 900 complaints, an increase of almost 50 per cent on the same time the previous year.

This included reducing the backlog of complaints awaiting an Early Resolution attempt down from more than 300 to zero.

A greater number of matters are also being resolved through conciliation — rising by 60% in the first half of the financial year compared to the previous year's results.

The improvements identified through these focused efforts are now being embedded in our BAU processes and will continue to help us manage privacy complaints in an effective and timely way.

In the Freedom of Information area, you would be aware that applications to my Office to review agencies' FOI decisions have also been on the rise — increasing 82 per cent in the four years to June 2019, as I noted in my last appearance before the Committee.

In the first half of the financial year we have seen this trend ease slightly, with 464 IC review applications received — 11 per cent less than the same period the previous year, but still a notable increase compared to previous years.

More than half the matters that have come to us over this period are classified as complex.

That means they may involve sensitive material, affect the rights and interests of affected third parties, or raise numerous exemptions.

We currently have almost 1,000 IC reviews under consideration, and of the IC reviews finalised, the average time taken is around 8 months.

We are continuing to increase the rate at which we finalise IC reviews — closing 13 per cent more reviews in the first half of the financial year than in the same timeframe the previous year. However, this is not keeping pace with the continuing rise in incoming work.

We continue to work to make our processes as efficient as possible within existing resources.

That includes attempting to resolve matters informally, for example, by:

- identifying matters that can be resolved early through agreement or negotiation
- providing agencies with the opportunity to make revised decisions

and by using the OAIC's regulatory powers under the FOI Act.

We continue to encourage agencies to deal with requests in a timely manner in order to meet their obligations under the FOI Act.

If an extension of time is needed, agencies should be seeking agreement from the FOI applicant first, applying early in the process, and providing evidence to my Office as to why it is necessary.

We would also like to see agencies analyse their FOI requests to identify areas where more information can be released proactively, to make the system work more efficiently for all involved.

Turning to other areas of focus, we are working towards the start date of July 2020 for the Consumer Data Right to commence in the banking sector.

Our primary role as co-regulators with the ACCC will be to regulate the privacy aspects of the scheme and handle consumer complaints from individuals and small businesses.

We recently published guidelines to help industry understand their obligations under the CDR Privacy Safeguards.

We are also establishing a new system for receiving and triaging all complaint and reports submitted under the CDR regime, to facilitate coordination of complaint and enforcement action by both regulators.

In relation to the Notifiable Data Breaches Scheme, I can also report to the Committee that we recently released a statistical report, covering the period from July to December 2019.

537 notifiable data breaches were reported, a 19 per cent increase in the number reported to the OAIC in the previous six months, providing accountability and transparency in the handling and protection of personal information.

Some key areas drawn out in the report include the risks associated with storing sensitive personal information in email accounts where it may be accessed when account credentials are compromised.

Generally, the trends remain consistent with previous reporting periods, with malicious or criminal attacks, including cyber-attacks, the cause of 64 per cent of all data breaches, and human error accounting for 32 per cent, with the remainder due to system faults.

Health and finance remain the top reporting sectors under the scheme, and so we are continuing to target these sectors for increased awareness and action on preventing and containing data breaches.

The NDB scheme is a key reform in recent times to improve accountability and transparency in the areas we regulate.

As we approach the tenth anniversary of the establishment of the OAIC, we are also preparing for changes to and a review of the Privacy Act.

Our work to support the review of the Privacy Act and reforms, and our ongoing focus to conciliate, investigate, review and determine issues raised with us by the community, reflect the commitment across the agency to increasing public trust and confidence in the areas we regulate.

Thank you, that concludes my opening remarks.