

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Group: 2

Program: Other Agency

Question No. BE15/034

Senator Bilyk asked the following question at the hearing on 27 and 28 May 2015:

Senator BILYK: Has the OAIC been referring complaints to the Ombudsman?

Prof. McMillan: Yes.

Senator BILYK: Is there a legal basis for making such a referral?

Prof. McMillan: Yes. The Ombudsman has a jurisdiction to handle FOI matters—as part of its general jurisdiction, I might say—and the FOI Act provides that the OAIC may transfer a complaint to the Ombudsman, and that matter has been well notified on our website since late last year.

Senator BILYK: How many complaints have been referred to the Ombudsman?

Prof. McMillan: I will have to take that on notice.

Senator BILYK: If you could take that on notice.

Prof. McMillan: I do not have the exact figure with me. We used to get about 70 to 80 complaints per year, and the Ombudsman gave evidence the other day before the Finance and Public Administration Committee of a small increase it has received in FOI complaints.

Senator BILYK: If you could take that on notice, that would be great. Has the AGD already taken responsibility for FOI policy and the development of guidelines?

The answer to the honourable senator's question is as follows:

From 1 November 2014, the OAIC ceased handling FOI complaints. The Commonwealth Ombudsman has taken over this function which has been part of its general jurisdiction. Section 74 of the *Freedom of Information Act 1982* provides for the Information Commissioner to transfer complaints to the Ombudsman. Since 1 November the OAIC has formally transferred 1 complaint. When people contact the OAIC about making an FOI complaint, the OAIC's practice is to advise them to contact the Ombudsman rather than transfer the matter given the additional administrative burden this would impose on the OAIC.