

## Engage, guide and educate | Significant increase

### **The OAIC should significantly increase its proactive engagement**

Increasing engagement will help the OAIC to broaden its reach and build relationships with the community and industry. To be effective, it should be known to the public; however, only 38 per cent of respondents to the 2023 Australian Community Attitudes to Privacy Survey were aware of the agency.<sup>55</sup> Increased engagement with individuals and the community through proactive online outreach and Commissioner speaking engagements will help it raise awareness about information rights and widely communicate the outcomes of its enforcement actions.

More proactive engagement with regulated entities will provide insight into the compliance of regulated entities, to inform monitoring efforts. It will also create traction for future education and guidance efforts. As noted in section 4.3, staff and stakeholders are concerned that regulated entities are not worried about or scared of the OAIC. The Government expects the agency to seek opportunities to engage and consult genuinely with stakeholders.<sup>56</sup> More engagement, such as through privacy assessment work, will put the agency on regulated entities' radars and allow it to have greater influence and credibility as a regulator.

The OAIC plays a critical role in safeguarding the FOI system but currently does not prioritise engagement with regulated entities to promote practices that increase public access to information. Witnesses to the FOI Senate Inquiry called for a more responsive FOI culture among agencies. Greater proactive engagement with regulated entities, as well as increased guidance and education, will help the OAIC to shift FOI culture in agencies towards more timely decisions and greater proactive disclosure.

### **The OAIC should significantly increase guidance and education**

The OAIC can use increased guidance and education to build awareness of emerging privacy risks and how consumers can better protect themselves. One staff member engaged by the Strategic Review noted that "there is opportunity to engage more directly with the public and provide helpful information about how to protect against and respond to data breaches (e.g. via website, outreach activities media, etc.)". The agency can provide practical and accessible guidance to encourage proactive protection by the community. This is a sustainable and less resource-intensive addition to intervention that will prevent privacy harms.

Increased education and guidance will allow the OAIC to provide more tailored and timely education to entities that are at risk of non-compliance and address non-compliances before they cause harm. The Government expects the agency to promote a regulatory approach that facilitates voluntary compliance and provide up-to-date, clear and accessible guidance to regulated entities.<sup>57</sup> More guidance and education will help to improve practices and support regulated entities to comply with changed policy and guidelines.

Additional practical guidance on proactive disclosure will help the OAIC to shift FOI culture to a more pro-disclosure culture. As noted in section 3.3, witnesses to the FOI Senate Inquiry saw benefit in OAIC guidance material on how agencies can build a culture of proactive disclosure and strengthen pathways for accessing personal information outside the FOI regime. This will require significant uplift in efforts to guide and educate FOI agencies through updated guidance and outreach activities.

<sup>55</sup> Australian Community Attitudes to Privacy Survey, 2023.

<sup>56</sup> Attorney-General's Statement of Expectations, p 5.

<sup>57</sup> Attorney-General's Statement of Expectations, p 5.



## Conciliate | Become more efficient

### The OAIC should be more efficient with conciliation

Reducing the emphasis on conciliation for low-risk complaints where it is unlikely to achieve an agreed outcome will encourage the OAIC to quickly proceed to investigation and/or enforcement, where permitted by legislation. The agency spends around 60 per cent of its resources on responding to individual complaints and IC reviews, including conciliation and case management. It will need to be more efficient to adapt to the growing and changing demands on its resources.

In some circumstances, conciliation is preferable to proceeding to a decision. For example, the OAIC can encourage IC review applicants and respondents to reach agreement to resolve IC review applications. This can be achieved by facilitating discussions about reducing the scope of the review instead of proceeding to a comprehensive determination. The agency is currently preparing directions to require IC review parties to meet, with a view to resolving or reducing the scope of the review.

Where a matter is appropriate for conciliation (where there are reasonable prospects of resolution) or conciliation is required by legislation, the OAIC should:

- refer complaints to alternative complaint bodies, or
- engage with the complainant and respondent to try to reach a quick, agreed outcome to resolve information access and privacy issues for individuals. The agency should use conciliation as an opportunity to influence respondent behaviour towards compliance.

## Assess and decide | Become more efficient

### The OAIC should be more efficient with assessing and deciding complaints and IC reviews

The OAIC's focus on assessing and deciding individual matters will need to shift to enable it to take on higher-priority enforcement matters. Assessment and decisions are critical agency functions, so it will continue to respond to matters it is required to. However, it can achieve greater efficiency by conducting more efficient assessments and decision-making for routine, low-risk complaints and IC reviews and, in particular, case management of these matters. Chapter 8 provides more detail about how risk-based triage and workflows can be used to action matters in a way that is proportionate to their risk and complexity.

Prioritising proactive regulatory work will necessarily require reactive work to be completed more efficiently or de-prioritised. For example, the agency may need to more frequently exercise its discretion not to handle privacy complaints or IC reviews. It will need to manage complainant expectations where it exercises this discretion. A trade-off of applying resources to the areas of greatest risk to the community is that de-prioritising low-risk matters may initially lead to an increase in the number of reviews of decisions not to pursue complaints or reviews, and/or applications to the Ombudsman.

Assessment and decision efforts should focus on:

- using the OAIC's expertise to make reasonable and fair decisions in accordance with best practice and governing legislation
- using the OAIC's decision-making responsibilities to shift practices; for example, handing down strong IC review decisions to promptly overturn incorrect decisions, resolution of privacy complaints to assess privacy practices of regulated entities and promoting good privacy practices.



## Monitor | Increase

### **The OAIC should increase monitoring**

Increasing monitoring to assess whether regulated entities are complying with their obligations will help the OAIC to capture emerging risks, identify non-compliance at an earlier stage and reduce risk of potential harm. It will also provide the agency with data to inform education and enforcement efforts.

The OAIC currently monitors privacy-regulated entities by conducting privacy assessments of their practices. It monitors FOI agencies through annual reports and five-yearly IPS surveys.

More monitoring could include analysing privacy and FOI complaints, and agency FOI data in IPS and annual reports, as well as conducting more privacy assessments. It could also include passive monitoring; for example, through compliance dashboards that require agencies to assess themselves against mandatory compliance requirements. This would provide transparency and accountability for regulated entities and the community.

The key to effective monitoring is what the OAIC does with the information obtained. Monitoring tells the agency whether regulated entities are complying with their obligations, and should inform proactive regulation. It can enable the OAIC to gain insights into emerging risks to feed into education campaigns, inform regulatory priorities and identify patterns of non-compliance to direct enforcement efforts.

## Investigate and enforce | Significant increase

### **The OAIC should increase the number of investigations**

Focusing more on investigations will assist the OAIC to identify breaches of Australian Privacy Principles and non-compliance with legislation at an earlier stage, and to remedy this through appropriate regulatory action. It should undertake investigations with a view to enforcement action as opposed to gathering information to make a decision (which is part of case management). The Government and the community expect the agency to focus on enforcement activities. Taking a stronger enforcement posture requires greater investigation effort.

### **The OAIC should significantly increase enforcement**

Stronger, timely enforcement actions will deter non-compliance, and address and reduce significant harms. As discussed in chapter 3, the Government and the community expect the OAIC to take more enforcement action to combat malicious cyber activity, which requires strong enforcement responses to avert potential harm. Government also expects the agency to publicise actions taken to address privacy breaches to promote public confidence in its regulatory activities.<sup>58</sup>

Taking proportionate and timely enforcement action will send a message to other regulated entities that the OAIC is a serious, responsive regulator:

- For FOI IC review matters, this could include launching more investigations into agency non-compliance with statutory timeframes, issuing implementation notices as a result of investigations, and issuing notices to agencies to require production of information and documents relevant to IC reviews.
- For privacy matters, this could involve undertaking strategic litigation in the first year of the amended Privacy Act, which is coming into force to encourage greater compliance, have a strong deterrent

<sup>58</sup> Attorney-General's Statement of Expectations, p5.

effect and clarify aspects of the Act. It will also involve undertaking more civil penalty proceedings to address significant privacy breaches.

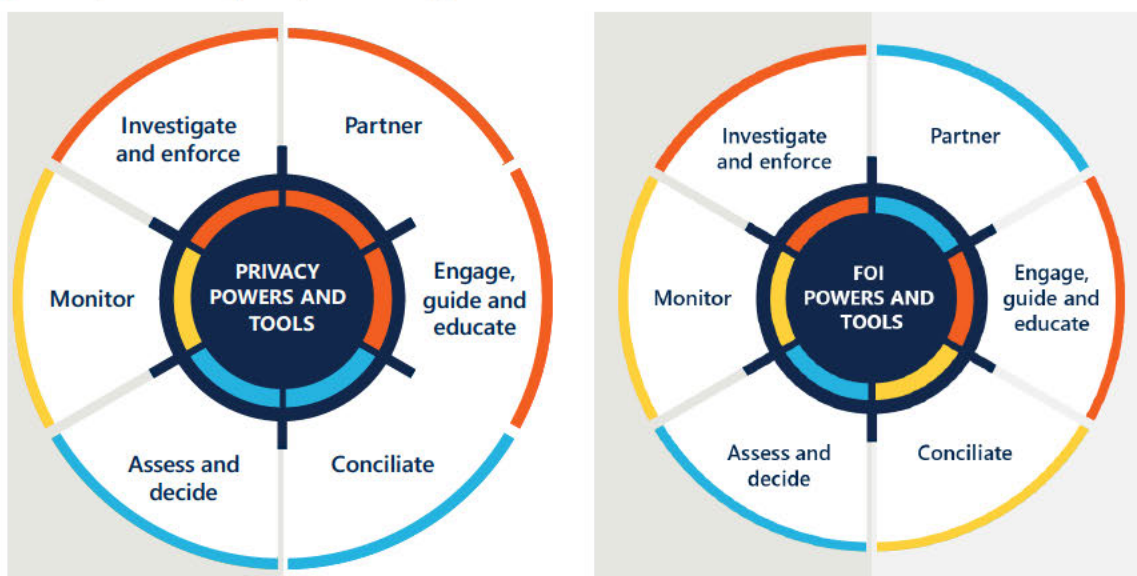
### The overarching statement and framework should be supported by concise articulation of the different approaches to privacy and FOI

The OAIC has a diverse remit, and the legislative powers and tools for privacy and FOI will require different emphases in approaches. Examples of how these tools and powers should be exercised to reflect the changed regulatory posture are set out in the descriptions of powers and tools above.

Complementing the overarching framework in Figure 36, Figure 37 shows the distinct approaches to privacy and FOI, and reflects the different emphases and uses of tools and powers. These should be living artefacts, as their application should depend on where the biggest risks lie and how the OAIC can best respond to changing demand. For example, they may change when the Privacy Act Review proposals are implemented, or as a result of any changes arising from Government consideration of the FOI Senate Inquiry.

The existing Privacy Regulatory Action Policy, Guide to Privacy Regulatory Action and FOI Regulatory Action Policy should be updated to reflect the changed focus on certain regulatory functions. These policies should also detail how regulatory functions work together and will be exercised.

Figure 37 | Indicative privacy and FOI approaches



Orange = significantly increased use of tool | Yellow = increased use of tool | Blue = more efficient use of tool

- *More partnership with co-regulators to build expertise, take joint action (with the ACCC for CDR) and provide comprehensive guidance to the community and regulated entities.*
- *More guidance and education to collect insight into regulated entity compliance, supporting them to comply.*
- *Less conciliation and fewer decisions of low-risk, low-priority privacy complaints; more efficient triage to move these matters to quick determination.*
- *More engagement, guidance and education with regulated entities to promote information access and assist agencies to comply with proactive disclosure obligations.*
- *More efficient conciliation for complex IC reviews by encouraging IC review applicants and respondents to reach agreement through facilitating discussions about scope reduction instead of proceeding to determination.*
- *Less comprehensive IC decisions, case management for low-risk, routine matters. More efficient triage to move these matters to quick determination.*



- *More monitoring of high-risk businesses and new or expanded areas; for example, expansion of CDR and increasing external threats such as data breaches.*
- *Significantly more investigation and strong enforcement action to deter non-compliance.*
- *More monitoring of regulated entities to determine high-risk agencies for compliance action.*
- *More enforcement through CILs to address agency non-compliance and timely, appropriate action.*

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## The new regulatory posture will need to be enabled by changes to the operating model

The OAIC's regulatory posture will only be effective if it is embedded in operations. Several shifts will be required to other parts of the agency's operating model to enable it to put the updated posture into practice, as set out in Table 5. These enablers are explored in the remainder of this report.

Table 5 | Operating model enablers for regulatory posture

CATEGORY	ENABLERS REQUIRED
<b>Governance</b>	<p>A governance approach that frees up Commissioner time to set strategic direction in accordance with the new regulatory posture and pursue critical value-adding activities such as advocacy and public engagement</p> <p>Governance structures that enable timely, effective regulatory decisions to be made</p>
<b>Structure</b>	<p>A structure that promotes an integrated and efficient approach to regulation across privacy and FOI and enables the agency to achieve its strategic priorities</p>
<b>Capability uplift</b>	<p>Training and resourcing for specialised resources and tools such as for investigating and monitoring complaint data</p>
<b>Culture and leadership</b>	<p>A culture that supports the shift to an enforcement- and education-focused posture by accommodating the risks inherent in moving to a risk-based approach and undertaking more enforcement</p> <p>It is also vital that the OAIC's new Commissioners play a key role in shaping and embedding the new culture</p>
<b>Processes</b>	<p>Processes for prioritising regulatory activities; for example, through triaging matters then applying the appropriate level of effort (higher effort for high risk and/or strategic matters, and lower effort for low-risk matters)</p>

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## 5 Governance

Governance will be an important enabler for the OAIC to achieve its purpose and future functionality. This chapter outlines the Strategic Review's findings relating to governance. It considers the suitability of current governance arrangements in enabling the OAIC to achieve its purpose and required future functionality. It also recommends amendments to governance arrangements.

**Figure 38 | Relevant questions from the Terms of Reference**

- To what extent is the OAIC's governance suitable to achieve its purpose and future functionality?

**Figure 39 | Summary of key findings**

- The OAIC's governance in recent years has been calibrated to several different Commissioner arrangements. Its current governance arrangements include several committees but processes to support statutory decision-making outside significant privacy matters are not uniform or formalised.
- The OAIC's current governance arrangements are designed to service one or two Commissioners and will not effectively scale to the three-Commissioner model. Current arrangements have not required many processes or structures, but do involve significant Commissioner engagement in day-to-day matters. This will not meet the needs of a three-Commissioner model.
- The commencement of two new Commissioners in February 2024 is an opportunity to set the direction for optimal organisational governance with clearly defined roles.
- The Strategic Review considered governance criteria, comparable models and legislative requirements to develop and refine options with the OAIC Executive. The legislative requirements of the AIC Act, the Privacy Act, the FOI Act, the Public Service Act and the PGPA Act have also been considered.
- An assessment of the options identified that a new Commissioner-directed governance model will best meet the governance criteria. This model clarifies Commissioner roles and reserves Commissioner time for value-adding work. It supports an integrated organisation through a governance board comprising all Commissioners, which sets strategic direction and supports Commissioner decision-making through governance committees.
- Operational enablers will be required to implement the recommended governance model. The OAIC's growing workload means that senior leaders will have to increasingly rely on formal governance structures and processes, which will be supported by a risk-based approach and effective triaging.

**Figure 40 | Strategic Review recommendations**

3. The OAIC adopt a Commissioner-directed governance model to achieve the agency's purpose and future functionality, where Commissioner time is reserved for critical value-adding activities and supports are in place to enable Commissioners to effectively perform their roles.



The analytical framework for the Strategic Review articulates five criteria for the OAIC's governance arrangements, as set out in Figure 41. These criteria were tested and refined with the agency's Executive team. They were used by the Strategic Review team to test the suitability of the OAIC's current governance arrangements in achieving the agency's purpose and future functionality, and to inform recommendations related to its future governance arrangements.

Figure 41 | Assessing the suitability of the OAIC's governance

CRITERIA	TEST
Strategic alignment	To what extent do governance arrangements align with and enable the OAIC's overarching strategy and purpose to promote and uphold privacy and information access rights?
Respects decision-making role of Commissioners	To what extent are the decision-making roles of each Commissioner respected?
Show clear lines of accountability	Are there clear lines of accountability for each Commissioner and the governance structures that support them, in respect of the OAIC's remit?
Reserve Commissioner time for value-adding work	To what extent is the Commissioners' time reserved for value-adding work (decision-making and external-facing work, not operations)?
Supports integration	To what extent do governance arrangements support an integrated OAIC?

## 5.1 The OAIC's current governance

### The OAIC's governance in recent years has been calibrated to several different Commissioner arrangements

The AIC Act provides for a three-Commissioner model that includes the IC, a PC and an FOIC. The IC is also the agency head for the purposes of the Public Service Act and is the accountable authority for the purposes of finance law provided under the PGPA Act.

The IC holds a unique role among the three Commissioners as agency head and accountable authority. As agency head, the IC has employer powers, and as accountable authority the IC is responsible for ensuring the OAIC is governed in a way that promotes the proper use of public resources and achieves the agency's purposes and financial sustainability.

The OAIC's current governance arrangements have been developed over time to meet the needs of the different Commissioner models it has operated under. In recent years, the IC has also fulfilled the PC role. Between 2014 and 2021, when the FOIC role was vacant, the IC also carried out those functions. Between 2021 and early 2024, three different people carried out the FOIC role, with only one of them formally appointed to the role.

The OAIC's current governance arrangements include a number of committees that advise the IC in relation to operational and strategic matters and statutory decision-making:

- The **Executive Committee** supports the IC to achieve the strategic objectives of the OAIC by ensuring executive focus on privacy and FOI priorities. The committee is chaired by the IC and comprises OAIC Commissioners and staff members at Senior Executive Service (SES) level.
- The **Operations Committee** ensures executive oversight of the management of the OAIC and several subcommittees (including the Health, Safety and Wellbeing Committee, the Security Governance



Committee, the Information Governance Committee and the OAIC Consultative Forum). The committee is chaired by the OAIC Deputy Commissioner and comprises SES-level and some Executive Level 2 staff members.

- The **Audit and Risk Committee** advises the IC on the appropriateness of the OAIC's financial reporting, performance measurement, system of risk oversight and management, and systems of internal control.
- The **Regulatory Action Committee** advises the IC on suitable regulatory responses to significant privacy risks.
- The **Diversity Committee** advises the IC on strategies and plans to promote a fair, inclusive and productive workplace.

The OAIC will soon return to a three-Commissioner model. In May 2023, the Government announced the appointment of a standalone FOIC and PC, increasing the permanent number of statutory information officers from one to three. The formal appointment of these two new Commissioners was announced in November 2023 and they will commence at the OAIC around the time of finalising this Strategic Review, in February 2024.

### **The OAIC's current governance arrangements are designed to service one or two Commissioners and will not effectively scale to the three-Commissioner model**

The OAIC's current governance arrangements have been calibrated to one or two Commissioners, which has not required highly formal or process-driven governance structures. Instead, it has favoured an informal approach. The OAIC currently has one committee that advises the IC on statutory decision-making, the RAC. The RAC only advises on significant privacy matters. There are separate meetings in relation to FOI matters but no formal governance structure around FOI decisions. The limited governance processes and structure have meant that Commissioners engage extensively in operational matters and the detail of day-to-day activities associated with privacy and FOI matters outside any governance structure. This contributes to significant Commissioner workloads and reduces the time available for strategic and external-facing activities.

The RAC is not set up or operating as intended to efficiently enable the IC to make decisions at the right time and at the right level of detail, and it does not account for the whole of the OAIC's remit. RAC processes make it difficult to provide clear and relevant advice to the IC, who then engages with significant detail to make decisions. The Strategic Review team evaluated the RAC's Terms of Reference along with de-identified meeting minutes and agendas, and found that the committee's processes could be simplified to involve fewer members and focus agendas on decisions rather than updates. Stakeholders engaged as part of the Strategic Review reported that the RAC is inefficient because of the infrequency of its meetings, its large membership and a reactive approach to meetings.

## **5.2 Opportunities to enhance the OAIC's governance**

### **Successfully shifting to a new regulatory posture will require changes to governance**

The OAIC is facing increasing demand and changing risks in the regulatory environment and needs a governance structure that sets it up to make efficient decisions. The OAIC's workload is expected to increase and become more complex due to the nature of external trends, in particular the rapid growth of the digital economy and advances in AI. There is an opportunity to implement a new governance model which will better enable the OAIC to meet increasing demand and changing risk.

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### **The appointment of new Commissioners is an opportunity to set the direction for optimal organisational governance**

The OAIC's return to a three-Commissioner model in 2024 necessitates changes to ensure the governance model is fit for purpose. The commencement of the new PC and FOIC provides an opportunity to ensure the OAIC is operating most effectively in its new governance structure, primarily how it is organised to deliver statutory decision-making and oversee organisational operations.

The Commissioners' roles must be clearly defined, with guidance on how their work should be delivered. This is particularly important given the flexibility of the AIC Act regarding which Commissioner may perform which functions. Responsibility for specific functions must be clearly articulated.

### **The Strategic Review considered criteria, comparable models and legislative requirements in developing governance options**

A set of criteria (see Figure 41) was developed based on Nous' IP on good governance. The criteria were tailored to the OAIC's unique mandate and environment, and tested with its Executive team. They helped the Strategic Review team to structure its thinking about how to achieve the OAIC's desired future governance, to assess options and to refine the preferred option.

Any future governance model must be consistent with relevant legislative requirements, including the AIC Act, the Privacy Act, the FOI Act, the Public Service Act and the PGPA Act. The OAIC sought legal advice on the functions, powers and responsibilities of the three Commissioners, to support and inform the design of suitable governance arrangements. This advice was considered by the Strategic Review.

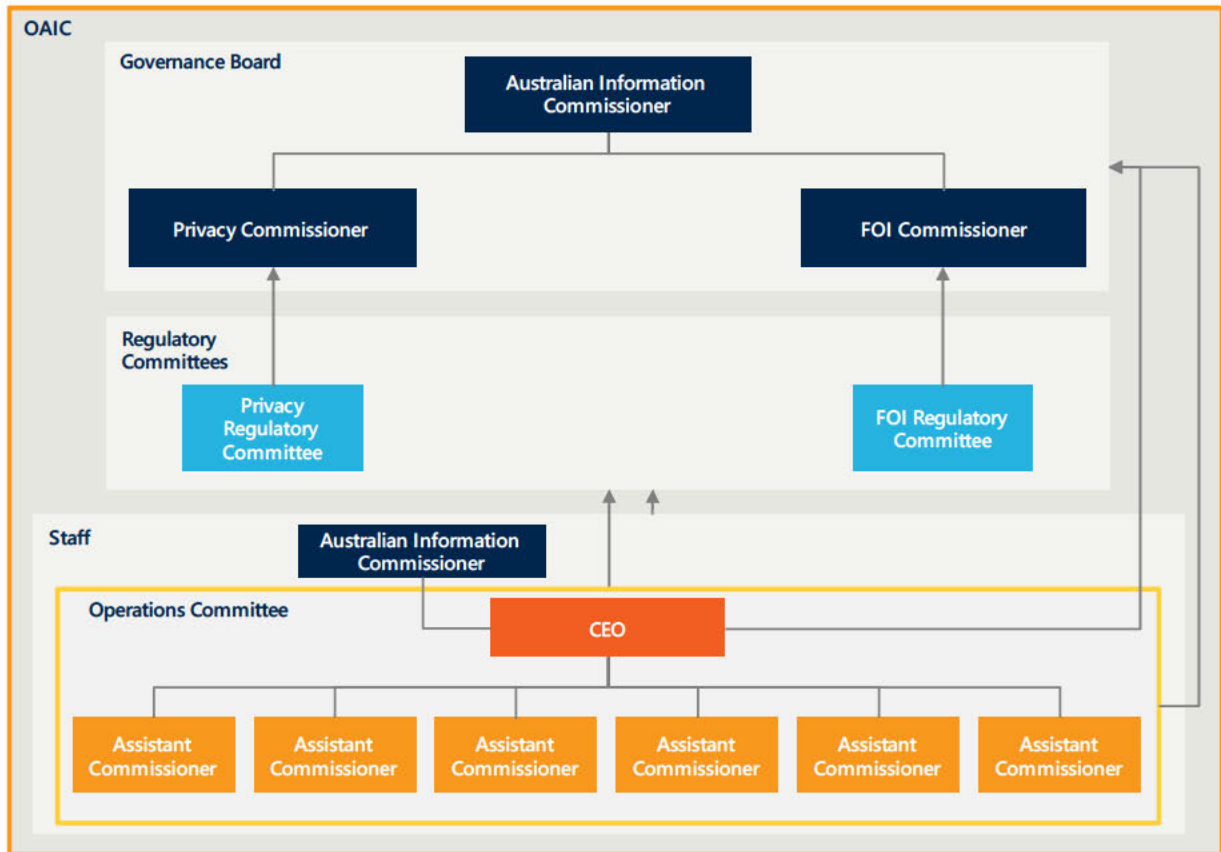
Several potential governance models were developed and assessed. These models are outlined at a high level in Appendix E. They were developed with consideration of the governance criteria, the legal advice described above, the experiences of other agencies with Commissioner models, and Nous' experience working with a range of public sector agencies on governance matters.

### **The assessment of different options identified that a Commissioner-directed model will best meet the governance criteria**

The Strategic Review assessed the governance options developed against the criteria and identified that a Commissioner-directed model would be most effective across all five criteria. An overview of this model is shown in Figure 42.



Figure 42 | Overview of the Commissioner-directed model



The roles and responsibilities of the OAIC Commissioners, the CEO and Assistant Commissioners (ACs) under a Commissioner-directed governance model are set out in Table 6.

Table 6 | Roles and responsibilities under a Commissioner-directed governance model

	IC	FOIC	PC	CEO	AC
Strategic	<ul style="list-style-type: none"> <li>Make strategic decisions and set direction as Governance Board, with IC as Chair</li> <li>Oversee and undertake engagement, advocacy and public-facing functions, including strategic communications</li> </ul>			<ul style="list-style-type: none"> <li>Provide information and recommendations on matters relevant to strategy (emerging trends, high-risk matters). Information and recommendations to come via Executive Committee, prepared by relevant executive</li> </ul>	<ul style="list-style-type: none"> <li>Provide information and recommendations on regulatory posture and approach through regulatory committees and Executive Committee. Relevant executive to prepare in first instance</li> </ul>
Statutory	<ul style="list-style-type: none"> <li>As required by legislation</li> </ul>	<ul style="list-style-type: none"> <li>Make statutory decisions as appropriate</li> </ul>	<ul style="list-style-type: none"> <li>Make statutory decisions as appropriate</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Make delegated decisions as appropriate</li> </ul>
Management	<ul style="list-style-type: none"> <li>Set budgets</li> <li>Make Executive staffing decisions</li> <li>Exercise other employment and financial powers by exception</li> <li>Endorse overarching policy settings and approach</li> </ul>	<ul style="list-style-type: none"> <li>Provide input to IC as decision-maker on management matters</li> </ul>	<ul style="list-style-type: none"> <li>Provide input to IC as decision-maker on management matters</li> </ul>	<ul style="list-style-type: none"> <li>Make financial decisions</li> <li>Make resourcing decisions</li> <li>Manage communications</li> <li>Oversee operational policy and procedures</li> <li>Oversee casework and responses to management questions</li> </ul>	<ul style="list-style-type: none"> <li>Make branch and team management decisions</li> <li>Make operational decisions</li> <li>Manage casework</li> <li>Manage responses to management decisions</li> </ul>



Details of the Commissioner-directed model are set out below, including consideration of how the model meets the governance criteria outlined in Figure 41.

- **Commissioners** focus on making strategic decisions (as the Governance Board) and statutory decisions relevant to their remit. Commissioners undertake engagement, advocacy and public-facing functions. The IC performs the 'information commissioner functions', the PC performs the 'privacy functions' and the FOIC performs the 'FOI functions' under the AIC Act. They do not directly manage staff, although they may have an office that supports them directly.
- The **Governance Board** sets strategic direction and endorses organisational policies and procedures. It receives reports on the OAIC's operations, including on performance and budget tracking.

**Who? |** The IC acts as Governance Board chair, and the PC and FOIC are members. Including all three Commissioners on the Governance Board promotes an integrated OAIC, supporting alignment on strategic matters and providing a mutual line of sight to the operations of the organisation. It provides a forum for the PC and FOIC to offer input on decisions about operational matters that fall within the remit of the AIC but may also affect how they perform their functions. The IC can meet accountability requirements as the accountable authority by making a collective decision with the other Commissioners. Other necessary members attend Governance Board meetings as required; for example, the CEO, the CFO or relevant ACs, for agenda items relevant to their remit. The Governance Board is coordinated by the adviser/chief of staff for the IC.

**What decisions are made? |** The board provides strategic direction for the organisation and makes statutory decisions.

**What materials are provided for decision-making? |** Board members receive agendas and operational reports from the Operations Committee covering OAIC compliance requirements, the agency's risk register, budget tracking and delegated decisions made. Relevant materials created for the OAIC's existing Executive Committee could be used to help develop Governance Board materials.

**How? |** The board has fortnightly hour-long governance meetings with the CEO, and quarterly half-day meetings for setting strategic direction.

- **Regulatory committees** operate as a forum for decision-making on matters that are not within the remit of the Governance Board. Details of committee structure, membership and decisions to be made are determined by the OAIC at its initial Governance Board meetings.
- **FOI and Privacy regulatory committees** support decision-making on the OAIC's regulatory approach to their respective areas and support clear lines of accountability for exercising regulatory functions. Committees provide information and recommendations to statutory decision-makers on which regulatory actions to take; for example, commencing civil penalty proceedings or investigating an FOI agency. These decisions are made in committee meetings by the relevant statutory decision-maker (staff at the lowest appropriate delegation, and Commissioners where necessary and appropriate) after receiving committee information and recommendations.

**Who? |** The PC or FOIC (as relevant) act as Chair and decision-maker; the CEO and relevant staff members support briefings on decisions to be made by the statutory decision-maker (the PC or FOIC as relevant). Meetings are coordinated by an adviser or the chief of staff of the PC or FOIC (as relevant).

**What decisions are made? |** The committees provide information and recommendations to statutory decision-makers on regulatory actions to pursue, and other statutory decisions to be made in committee meetings.



Stakeholders have raised concerns about whether it is appropriate for IC review decisions to be made in an FOI committee meeting, stating that this forum would not support efficient and effective decision-making due to the detail and length of decision documentation. It is a matter for the OAIC to design and implement committee arrangements in a way that considers how IC reviews are managed.

Matters dealt with at committee level that have strategic or organisation-wide implications would be reported to the Board by the relevant Commissioner.

**What materials are provided for decision making?** | Committee members receive a template-based 'recommendation of decision' of 1–5 pages. This would be potentially supported by verbal briefings at weekly meetings, addressing how a decision aligns with regulatory priorities, and required resourcing. Relevant materials for the OAIC's existing RAC could be used to help develop regulatory committee materials.

**How?** | Committees meet weekly, with relevant staff to present on matters for decision.

- The **Operations Committee** works collectively with the CEO to oversee agency operations. It provides information and recommendations to the Board (through the CEO) on operational updates and issues.

**Who?** | The CEO and Assistant Commissioners are members.

**What decisions are made?** | The committee considers budget management and allocation, operational oversight, stakeholder engagement and communication, regulatory compliance and risk management.

**What materials are provided for decision making?** | An agenda is provided at each meeting.

**How?** | The committee meets monthly.

- The **Audit Committee** reviews the OAIC's financial reporting, performance reporting, system of risk oversight and management, and system of internal control, as required by section 45 of the PGPA Act and section 17 of the PGPA Rule. Regardless of the governance model selected, this committee will be required.
- The **Chief Executive Officer** is responsible for organisational operations and overall management of staff, which supports the Commissioners to reserve their time for critical decision-making, and strategic and external work. Clear lines of accountability are facilitated by reporting lines and appropriate delegations, to support the IC to meet their obligations as agency head and accountable authority of the OAIC. The CEO reports to the AIC as agency head and to the Governance Board on operational performance, OAIC compliance requirements, risk register, budget tracking and any delegated decisions made. Additional advisory committees (several of which already exist; for example, committees focused on diversity, and health, safety and wellbeing) may be required to support the CEO to manage organisational operations.

Currently, CEO functions are performed by the IC, Deputy IC and Chief Operating Officer (COO). An important feature of the Commissioner-directed model is that operational and staff management functions are carried out by the CEO so that the IC's time is reserved for critical functions that add most value. The Commissioner-directed model proposes that the IC's agency head employment powers and accountable authority financial powers be delegated where appropriate to the CEO. The CEO would then provide updates on the exercise of these powers at governance meetings with the Commissioners to ensure that the IC has sufficient oversight and reassurance that their responsibilities are acquitted. Table 7 shows how these functions could be divided.



Table 7 | Summary of proposed CEO roles

Roles performed by the CEO	Roles <i>not</i> performed by the CEO
<ul style="list-style-type: none"> <li>Manage staff</li> </ul>	<ul style="list-style-type: none"> <li>Make statutory decisions (for example, IC review decisions and privacy complaint determinations)</li> </ul>
<ul style="list-style-type: none"> <li>Run operations</li> </ul>	<ul style="list-style-type: none"> <li>Make strategic decisions</li> </ul>
<ul style="list-style-type: none"> <li>Prepare operational policy documentation or procedures and approve policies</li> </ul>	<ul style="list-style-type: none"> <li>Carry out engagement, advocacy and public-facing functions, including strategic communications</li> </ul>
<ul style="list-style-type: none"> <li>Manage finances (with CFO)</li> </ul>	<ul style="list-style-type: none"> <li>Endorse overarching policy settings and overarching approach to putting strategic decisions into practice</li> </ul>
<ul style="list-style-type: none"> <li>Manage communications</li> </ul>	<ul style="list-style-type: none"> <li>Set the agency budget</li> </ul>
<ul style="list-style-type: none"> <li>Manage oversight of casework and responses to operational questions (note that Assistant Commissioners or equivalent will be responsible for this work)</li> </ul>	

- Assistant Commissioners** execute decisions within organisational branches, ensure consistency of delegated decision-making and effective triage of matters for decision, and collaborate with other Assistant Commissioners to progress matters. Assistant Commissioners provide effective management of statutory functions and participate in committees and reporting (to the CEO and Commissioners) to enable Commissioners to meet their statutory obligations without directly managing staff or engaging in operational matters. This reserves Commissioners' time for critical decision-making, and strategic and external work.

### RECOMMENDATION 3

3

The OAIIC adopt a Commissioner-directed governance model to achieve the agency's purpose and future functionality, where Commissioner time is reserved for critical value-adding activities and supports are in place to enable Commissioners to effectively perform their roles.

## There are potential risks associated with the Commissioner-directed model

All governance options have risks and opportunities. We recognise there are risks associated with the Commissioner-directed model. Identified risks are outlined in Table 8, along with potential mitigation measures to build into the supports for the new governance structure.

Table 8 | Risks and mitigations for the Commissioner-directed model

POTENTIAL RISK	MITIGATION
Commissioners not having direct responsibility for staff may mean they don't have sufficient oversight to make decisions.	<ul style="list-style-type: none"> <li>Committees will be supported to deliver the level of guidance Commissioners require to make statutory decisions without directly managing staff.</li> <li>The governance structure and communications around the changes will clearly set out the direction-setting role of the Commissioners and the role of the CEO in managing staff so Commissioner time is reserved for critical value-adding activities.</li> </ul>
The Commissioner-directed model may set up the CEO as a single point of failure in the organisation.	<ul style="list-style-type: none"> <li>The CEO will have adequate support from the Operations Committee, Assistant Commissioners and Commissioners.</li> <li>The Commissioners or other relevant staff – not the CEO – make statutory decisions on advice from committees, so the CEO cannot hold up decisions.</li> <li>Regular meetings between the CEO and the Governance Board will be supported by a report covering operational matters so the Board has visibility over the CEO and operations.</li> </ul>
The CEO does not have capacity for all responsibilities a CEO model places on them.	<ul style="list-style-type: none"> <li>A clear job description will set out the required qualities, attributes, experience and skills of the CEO.</li> <li>The Operations Committee will share operational responsibilities with the CEO.</li> </ul>
Formal processes around the governance structure will mean decisions need to wait for committee meetings, resulting in slower decisions.	<ul style="list-style-type: none"> <li>Committees will have arrangements for making urgent decisions (such as significant harms requiring immediate action that cannot wait for the next weekly committee meeting).</li> <li>The use of formal processes will be balanced with informal sharing of information before or after meetings and flexibility around recommendations and information presented at meetings (which could be a one-page document of key considerations to discuss at a meeting).</li> </ul>
Delegating decision-making to more junior levels could result in decisions that are less able to withstand scrutiny and that pose risks to the agency.	<ul style="list-style-type: none"> <li>Staff will be supported to make decisions and will receive appropriate training where needed.</li> <li>The OAIC's move to a more risk-based regulatory approach acknowledges that mistakes may be made. This is an acceptable trade-off to pursuing an approach that will reduce harm to the community through privacy breaches.</li> <li>Changes to the agency culture will support staff to accept organisational risks and mistakes as part of the new posture and develop confidence in decision-making.</li> <li>Delegating decision-making to staff at lower levels can have benefits as they often have greater knowledge of supporting information than staff at higher levels.</li> </ul>



## Operational enablers will be required to implement the recommended governance approach

The participation and commitment of OAIC senior leaders in operationalising the new governance model will be essential for its success. Currently, senior leaders manage governance challenges through their collegiate and working relationships. The increasing workload facing the OAIC and the addition of new Commissioners will mean senior leaders will have to rely more on formal structures and processes. The new governance model requires close collaboration between the Commissioners to ensure agreement about the OAIC's strategic direction.

Key enablers that will assist in operationalising the new governance approach are outlined in Table 9.

Table 9 | Enablers of the OAIC's proposed new governance model

CATEGORY	ENABLERS
Regulatory posture and approach	<ul style="list-style-type: none"> <li>There is a risk-based approach to regulation and an appropriate and proportionate approach to dealing with matters – refer to Recommendation 2. Commissioners provide strategic direction and, supported by committees, make decisions focused on regulatory priorities and the greatest risks of harm to the community.</li> <li>Matters are effectively triaged so that those involving low risk do not progress for decision by Commissioners – refer to Recommendation 9.</li> </ul>
Processes	<ul style="list-style-type: none"> <li>Matters are delegated appropriately to reflect the level of risk and the capability of staff. Only where necessary are matters progressed for decision by the Commissioners or CEO. Delegations are supported by approvals processes and practices that ensure they are undertaken at the most efficient and effective level of seniority – refer to Recommendation 9.</li> <li>Tools and templates support efficient decision-making. For example, there are clear terms of reference for all committees, and a one-page template for decision recommendations.</li> <li>There are set processes for how information flows down through the governance structure, to ensure communications about decisions reach appropriate staff in a timely way.</li> </ul>
Workforce capability	<ul style="list-style-type: none"> <li>Executives feel comfortable and capable in making decisions and recommendations without heavy involvement from Commissioners and without needing to spend large amounts of time reviewing source documents.</li> <li>Staff are capable of preparing concise briefings and making strong decision recommendations.</li> </ul>
Culture and leadership	<ul style="list-style-type: none"> <li>Established practices, conventions and protocols support effective working relationships, and cooperation and coordination between the three Commissioners. These arrangements are consistent with the agreed governance arrangements and statutory responsibilities of each Commissioner.</li> <li>A refreshed risk management approach cultivates a healthy organisational risk appetite so that Commissioners, the Executive and staff acknowledge that some risk and mistakes are acceptable and part of effective regulatory action.</li> <li>Operational principles and guidelines support a risk-based approach to regulation and organisational risk management.</li> <li>Appropriate delegations and regular feedback cultivate a culture in which the Commissioners and Executive trust in staff members' work and recommendations.</li> <li>Commissioners take a strategic approach and are not diverted to operational matters. They support a risk-based approach and demonstrate a healthy risk appetite through their decisions – for example, in pursuing enforcement proceedings.</li> <li>The CEO effectively runs the organisation, including giving effect to decisions and managing operations. The CEO ensures that staff are making recommendations in accordance with the OAIC's risk appetite and builds a culture of trust and feedback.</li> </ul>

## 6 Organisational structure

A fit-for-purpose structure will be a critical enabler for the OAIC's future effectiveness and its ability to fulfil its purpose. This chapter describes the current structure and its alignment with the best practice criteria in our analytical framework. It also provides potential structural options that the OAIC could adopt going forward in response to several key drivers of change.

Figure 43 | Relevant questions from the Terms of Reference

- To what extent is the OAIC's structure suitable to achieve its purpose and future functionality?

Figure 44 | Summary of key findings

- The OAIC's current structure focuses firstly on the division between privacy and FOI work and then by the necessary functions associated with each regulated area. This structure reflects the extensive growth in the agency's staff and the areas it has regulated over the past ten years.
- The OAIC has made structural changes in recent years to support an increased enforcement focus. This includes standing up the Major Investigations Branch in October 2022 to facilitate large-scale investigations in a focused and direct manner.
- The current structure is not suitable to achieve the OAIC's purpose. It does not promote an integrated approach to regulation. It also duplicates functions across branches, which has resulted in inefficiencies, inconsistent practices, and missed opportunities for integrated functions across FOI and privacy.
- The structure will require further change to support future functionality in response to several key drivers of change: the likely upcoming legislative change arising from the Privacy Act Review; the impact of the new regulatory strategy, posture and approach that are outlined in Recommendation 1 and Recommendation 2; the commencement of three new Commissioners and the associated governance changes as outlined in Recommendation 9; and the implementation of new process workflows, as outlined in Recommendation 11.
- The Strategic Review explored several structural options with the OAIC's Executive team, ranging from structures centred around functions to regulated areas. The selection of an option will be deferred until after the Strategic Review recommendations have been fully considered and the new FOIC and PC have commenced in their roles.

Figure 45 | Strategic Review recommendations

4. After a final decision is made by the Government on the Privacy Act Review recommendations, and the incoming Privacy Commissioner and FOI Commissioner have commenced, the OAIC update its structure to achieve the agency's purpose and future functionality in ways that will enable it to deliver on its new regulatory posture.

The analytical framework for the Strategic Review articulates seven best practice criteria and tests for assessing the suitability of the current organisational structure and designing potential new structural



options. These criteria have been tested and refined with the OAIC's Executive and are outlined in Figure 46.

Figure 46 | Assessing the suitability of the OAIC's structure

CRITERIA	TEST
Alignment to strategy	To what extent does the OAIC's structure enable it to achieve its strategic priorities?
Integrated approach	Does the structure enable a 'one OAIC' approach to integrated, end-to-end regulation and facilitate a smooth and collaborative workflow between teams?
Responsiveness	To what extent does the OAIC's structure enable efficient and effective responses (including decision-making) to high-risk matters, and more broadly?
Focus on stakeholders	To what extent does the OAIC's structure enable effective engagement and communication with stakeholders, meeting evolving needs and expectations?
Clear roles and accountabilities	To what extent does the OAIC's structure enable clear definition of staff members' positions and reporting lines, and ensure responsibilities (including handover points) are clearly assigned, with accountability for achieving desired outcomes?
Minimises duplication	To what extent does the OAIC's structure minimise inefficient duplication of effort?
Expertise	To what extent does the OAIC's structure foster regulated area expertise across the agency?

## 6.1 The OAIC's current structure

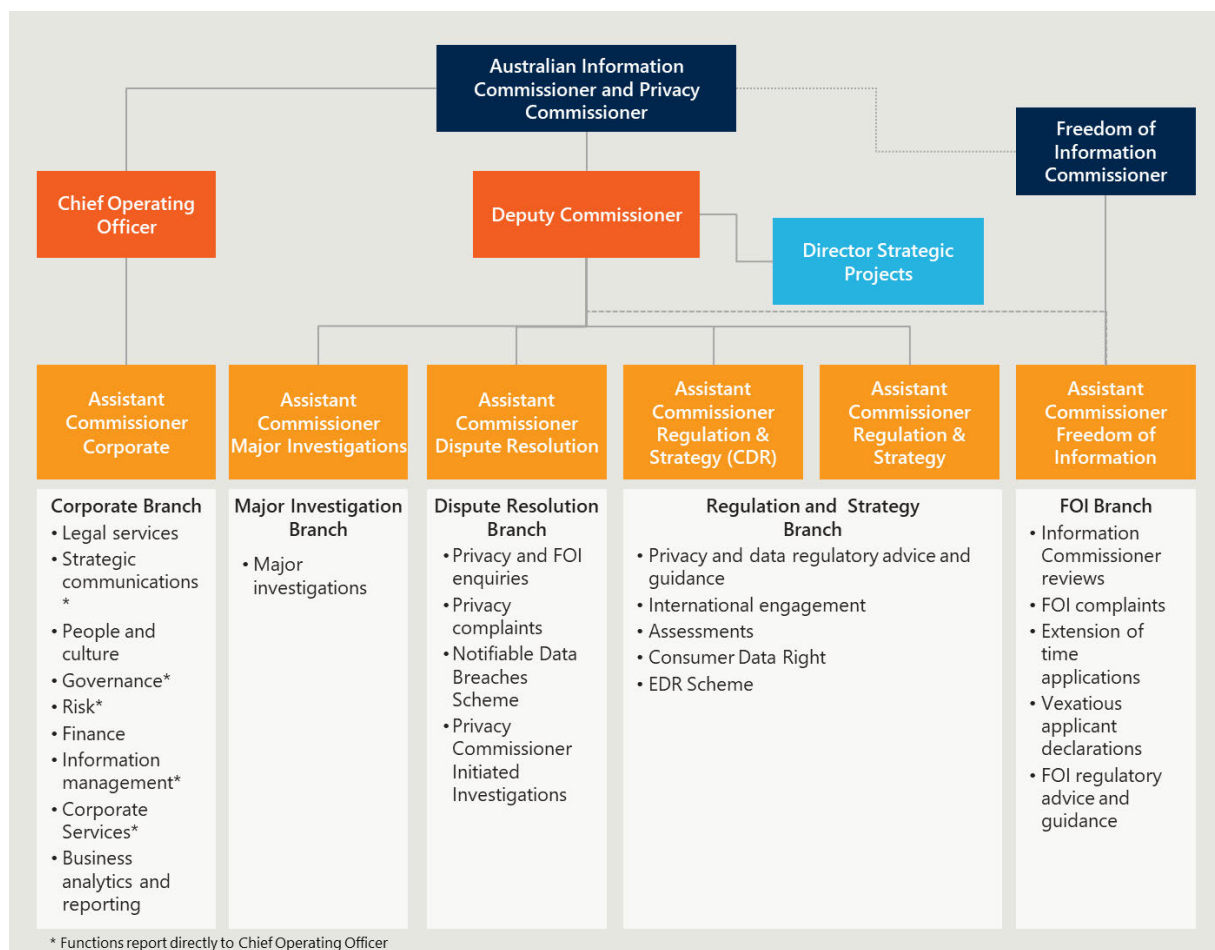
### The current structure is organised by regulated area, with some functional elements

The current structure divides the agency into branches by regulated area and corporate functions. Figure 47 provides a high-level overview of this structure and the functions completed by each branch, which are split by regulated area and by the type of action completed.

This structure focuses firstly on the division between privacy and FOI work and then by the necessary functions associated with each regulated area. This structure reflects extensive growth in the agency's staff and the areas it has regulated over the past ten years.

Privacy and FOI, and their associated branches, are structured quite differently. FOI is organised as a single branch. Privacy is split across four branches: Major Investigations, Dispute Resolution, Regulation and Strategy, and Regulation and Strategy (CDR). The four privacy branches have overlapping areas of function, with Major Investigations covering large-scale privacy CIIs and NDBs, and the two Regulation and Strategy branches split by CDR-associated functions and Privacy (non-CDR functions). Within the current structure, all non-corporate branches report to the Deputy Commissioner, with the Corporate Branch reporting to the COO.

Figure 47 | The OAIC's current organisational structure



## Recent structural changes supported greater emphasis on enforcement and increased supporting functions

Structural changes in recent years support an increased focus on enforcement. This includes standing up the Major Investigations Branch in October 2022 to facilitate a focused and direct approach to large-scale investigations, including into the Optus and Medibank data breaches. This branch receives cases through the Dispute Resolution Branch's work or by direction of the Commissioner or the broader Government. As such, it requires strong communication with the Dispute Resolution Branch to ensure that appropriate cases are picked up.

Other structural changes to the Corporate Branch, in FY23, introduced the COO to oversee and support the branch. The branch has expanded to include the Business Analytics, Data and Reporting team, which oversees data collection and analysis. Recently, this team has been supported by the Technical Services Systems Review team, which oversaw the Systems Review of the OAIC.

These changes have supported the OAIC as the scope and volume of its work has increased. In particular, the separation of the Major Investigations Branch and its associated investigations has streamlined its work and ensured that the Dispute Resolution team is not overwhelmed by a backlog of cases associated with these investigations. For the corporate functions, the changes have helped increase the agency's data knowledge base.



## The current structure does not fully address the organisational best practice criteria

Despite the OAIC's efforts to bring together common functions in recent years, the current structure does not meet all structural best practice criteria shown in Figure 46. Several functions are performed in multiple branches, which can lead to duplication and inconsistencies in the way the OAIC engages with stakeholders. The asymmetry of functions between FOI and privacy – which means that some branches only deal with privacy matters when they could also cater for FOI matters – does not support an integrated approach to regulation. It makes it more challenging for the OAIC to achieve its purpose.

An assessment of the extent to which the OAIC's current structure aligns with the best practice criteria is provided in Table 10.

Table 10 | How well the OAIC's current structure aligns with best practice criteria

CRITERIA	ASSESSMENT	
Alignment to strategy	<ul style="list-style-type: none"> <li>Dedicated Major Investigations for enforcement action sets up the OAIC to deliver on its enforcement posture.</li> <li>Education efforts are split between branches. This does not enable prioritisation between education and guidance work. It may also mean messaging to the community and regulated entities is inconsistent.</li> </ul>	●
Integrated approach	<ul style="list-style-type: none"> <li>There is an asymmetry of functions between FOI and privacy, with some branches only serving privacy matters even though they could also serve FOI. For example, education and regulatory guidance activities are performed by the FOI Branch but are completed by Regulation and Strategy for privacy. This means FOI Branch staff have less opportunity to develop specialist skills than they would if they were part of a centralised team serving both FOI and privacy.</li> <li>Having separate regulated area branches makes it challenging to assess the relative priority of matters across the agency and ensure that the focus is on matters of the highest risk.</li> </ul>	●
Responsiveness	<ul style="list-style-type: none"> <li>The current structure is set up to respond to matters through dedicated branches to respond to FOI IC reviews and complaints (FOI Branch), and privacy complaints (Dispute Resolution Branch).</li> <li>Persistent backlogs indicate the need for greater consistency and collaboration, and structural changes, to enable faster decision-making.</li> </ul>	●
Focus on stakeholders	<ul style="list-style-type: none"> <li>Stakeholder engagement is spread across different teams and divided by privacy and FOI. This results in varied practices, processes and ways of working. It leads to inconsistencies across engagements, such as in the way the agency responds to complaints.</li> <li>The current structure is set up to respond to individual matters and does not focus on proactive engagement with stakeholders. This approach does not place the OAIC in the best position to meet the evolving needs and expectations of stakeholders.</li> </ul>	●
Clear roles and accountabilities	<ul style="list-style-type: none"> <li>Branches have clear functions, but some duplication necessitates greater clarity and more clearly defined handover points between branches.</li> <li>Staff reported that branch responsibilities are clearly defined and staff are aware of the functions of their branch.</li> <li>Where matters require branches to work together, staff reported lack of clarity on the workflow. This could lead to duplication of effort or delays in progressing matters.</li> </ul>	●



CRITERIA	ASSESSMENT	
Minimises duplication	<ul style="list-style-type: none"> <li>• Similar functions are performed by different people across multiple branches, which does not enable the most efficient allocation of resources.</li> <li>• The time taken to onboard and train staff, develop templates and resources, and deliver a function (for example, receiving a complaint or conducting a review) is doubled when it is undertaken by multiple teams.</li> </ul>	●
Expertise	<ul style="list-style-type: none"> <li>• The current structure fosters expertise in FOI regulation in the FOI Branch and privacy expertise in other branches, including in the Dispute Resolution Branch.</li> </ul>	●

Key: ● Meets criteria fully   ● Meets criteria somewhat   ● Does not meet criteria

Source: *Nous analysis of current structure with input from the OAIc's Executive*

### Structural change is required to address future functionality, including to respond to external drivers of change and enable changes arising from the Strategic Review

The issues with the current structure outlined above, coupled with several key internal and external drivers of change, mean that structural change is required in the coming months. The key drivers of change include:

- the likely upcoming legislative change arising from the Privacy Act Review, as outlined in chapter 3
- the impact of the new regulatory strategy, posture and approach, as outlined in Recommendation 1
- the commencement of two new Commissioners in February 2024 and a third in late 2024, and the associated governance changes, as outlined in Recommendation 3
- the implementation of new process workflows, as outlined in Recommendation 9.

## 6.2 Opportunities to enhance the OAIc's structure

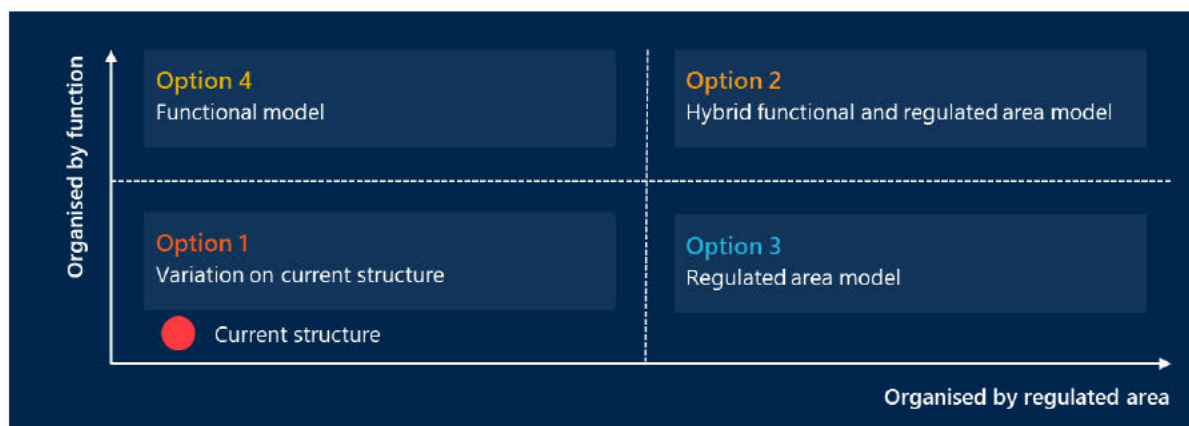
### The Strategic Review explored several structural options, ranging from structures centred around functions to regulated areas

The Strategic Review team developed four structural options, each of which is described at a high level in Figure 48 – and in more detail in Appendix F. They include structures organised by function (for example, enforcement or guidance) and by regulated area (for example, privacy, FOI or CDR). The OAIc's current structure as described above reflects a hybrid model that aligns to both function and regulated areas.

The options were developed in accordance with the best practice criteria and tests in Figure 46, and in response to the drivers of change outlined above. They are tailored to the OAIc's unique mandate and environment, and incorporate lessons from other comparable regulators.

They were further refined through a series of workshops with the OAIc's Executive. Option 3 – the 'Regulated area model' – was rated as the least preferred and so was ruled out.

Figure 48 | Structural options considered by the Strategic Review



### A final structure option will be selected as part of the implementation of the Strategic Review's recommendations

Structural change will require buy-in from key OAIC stakeholders, and the imminent commencement of two new Commissioners is a critical opportunity to achieve this. Robust engagement with key stakeholders, including the incoming Commissioners, has resulted in divergent views. It would be beneficial to defer the finalisation of the structural change until the Strategic Review recommendations have been fully considered and the new FOIC and PC have commenced in their roles. The final choice should also consider how proposals from the Privacy Act Review may change or add to the OAIC's functions.

#### RECOMMENDATION 4

4

After a final decision is made by the Government on the Privacy Act Review recommendations, and the incoming Privacy Commissioner and FOI Commissioner have commenced, the OAIC update its structure to achieve the agency's purpose and future functionality in ways that will enable it to deliver on its new regulatory posture.



## 7 Organisational capability

Attracting and retaining the right people with the right skills and capabilities, and fostering an inclusive and high-performing culture, will play a critical role in enabling the OAIC to deliver on its regulatory strategy. This chapter outlines the Strategic Review's findings on the agency's organisational capability, the extent to which it is suitable to achieve the agency's purpose and future functionality, and outlines recommended amendments.

Figure 49 | Relevant questions from the Terms of Reference

To what extent are the OAIC's organisational capabilities suitable to achieve its purpose and future functionality?

Figure 50 | Summary of key findings

### WORKFORCE CAPABILITY AND SKILLS

- The OAIC's workforce has undergone significant changes over the past three years. It has increased significantly in size, from 105 in 2020 to 162 in 2023. It has also moved towards a permanent hybrid working model and transitioned from being predominantly Sydney-based to being dispersed across the country. Turnover has been high across all branches over the past two financial years.
- These factors have posed challenges related to building and retaining corporate memory and know-how related to core functions.
- The agency's skills profile will need to evolve to respond to rapidly evolving technological drivers of change. It will also need appropriately skilled people to increase its focus on enforcement to address harm arising from privacy breaches, and to provide education and guidance. The agency will likely need to build and acquire skills and capabilities related to cyber security, AI, data analytics, forensic investigations, commercial litigation, and engaging with and educating industry.
- Current induction practices are too decentralised and not fit for purpose. This has posed unnecessary challenges for new staff and led to inconsistencies in how key processes are applied across the agency.

### EMPLOYEE EXPERIENCE

- The OAIC tends to attract people who are motivated to work at the agency because of its mission and purpose. Most staff therefore feel a strong sense of connection to the agency and to their work. Most staff also feel that the OAIC has an inclusive culture and workplace.
- Most staff feel motivated and challenged by their work – although those undertaking more repetitive work tend to feel less engaged. Given the relatively small size of the agency, its specialist nature, and its modest investment in learning and development, many staff feel that there are limited opportunities to learn and grow.
- Most staff feel the agency cares about their wellbeing, although many also report feeling stressed and overworked. The latter sentiment is more common in the FOI and Corporate branches.
- Remuneration is low compared with many other agencies and well behind equivalent state government and private sector roles – particularly in the legal and technology sectors. The

OAIC therefore needs to compete in the labour market on other factors such as purpose and workplace conditions. Most staff appreciate the OAIC's flexible work environment.

#### CULTURE AND LEADERSHIP

- The OAIC has a culture that appears to place a premium on delivery, being technically expert, getting the details right and managing risk. All these observed values manifest in constructive and less constructive ways throughout the agency.
- Staff typically have a high regard for the Executive team's technical abilities. However, they consistently highlighted several leadership behaviours that are not well-suited to the OAIC's increased size, scale and geographic footprint. These behaviours include excessive risk-aversion and caution; a reticence to engage in, communicate or adhere to forward planning; a mismatch between what is said and done around ensuring staff wellbeing; a desire to frequently get into matters of detail; and a striving for levels of quality that are perceived as unnecessary.

#### SOURCING EXTERNAL CAPABILITIES

- In recent years, the OAIC has substantially increased its spending on external legal support, from \$1.1 million in FY20 to \$5.7 million in FY23, as the agency has focused more on enforcement. **s 47C**

Figure 51 | Strategic Review recommendations

5. The OAIC refresh its strategic workforce plan and learning and development strategy to identify the roles and skills needed to deliver its updated regulatory posture, achieve its purpose and future functionality and respond effectively to the likely continuing growth to the volume and complexity of its core statutory workload.
6. The OAIC develop a consistent, enterprise-wide induction program to ensure consistencies of practice, supporting the agency to achieve its purpose and future functionality and respond effectively to the likely continuing growth in the volume and complexity of its core statutory workload.
7. The OAIC further consider its current culture and how it manifests in organisational values and behaviours, clearly articulates its desired future culture and leadership, and consider the documentation and supports that will enable the desired future culture.

**s 47C**



The analytical framework for the Strategic Review articulates four criteria for the OAIC’s organisational capabilities, as set out in Figure 52. These criteria were used to test the suitability of the OAIC’s organisational capabilities to achieve its purpose and future functionality, and to develop our recommendations.

Figure 52 | Assessing the suitability of the OAIC’s organisational capabilities

CRITERIA	TEST
Appropriately skilled	Does the OAIC have the right number and type of capabilities and skills needed to effectively and efficiently deliver on its regulatory strategy?
Compelling employee value proposition	To what extent does the OAIC have a compelling value proposition for current and prospective staff?
High-performing and inclusive culture	Does the OAIC have a high-performing and inclusive culture?
Optimal outsourcing	Is the OAIC procuring external capabilities under appropriate circumstances?

## 7.1 Workforce capability and skills

### Significant workforce transformation over the past few years has made it challenging to build and retain corporate memory

The OAIC’s workforce has undergone major changes over the past three years, with a significant increase in FTE (from 105 in 2020 to 162 in 2023) and the move towards a permanent hybrid working model. Before 2020, most staff worked in the OAIC’s Sydney office; now they are more widely spread across the country. The OAIC’s geographic footprint by branch is shown in Figure 53.

Figure 53 | FTE by location and branch

Location	Corporate	Dispute Resolution	FOI	Major Investigations	Regulation and Strategy	Executive	Total
ACT	5	1	5	–	1	1	12
NSW	18	41	16	9	21	1	106
NT	–	–	1	–	–	–	1
Qld	7	2	3	–	3	1	17
SA	5	3	–	–	6	–	14
Tas	–	1	–	1	1	–	3
Vic	10	3	1	–	4	1	19
WA	–	1	2	–	–	–	3
<b>Total</b>	<b>45</b>	<b>51</b>	<b>28</b>	<b>10</b>	<b>35</b>	<b>4</b>	<b>173</b>

Source: OAIC-supplied data as at September 2023

At the same time as the OAIC's workforce has become larger and more geographically dispersed, the agency has experienced high levels of turnover across all branches over the past two financial years, as shown in Table 11. The OAIC's digital platforms have therefore been critical in enabling collaboration between teams and in onboarding new staff.

**Table 11 | Staff attrition rate by branch**

Branch	2021-22 (%)	2022-23 (%)
Dispute Resolution	33	20
Regulation and Strategy	38	16
Freedom of Information	58	36
Corporate	54	39
Corporate (Legal Services)	38	42
Executive	14	22
Total	40	25

Source: data provided by OAIC

The agency's workforce has higher proportions of female and part-time workers, and those from non-English speaking backgrounds, relative to APS averages. See Appendix G for further details of key workforce metrics for the agency, relative to APS averages.

OAIC staff on average had a lower median length of service and had a higher exit rate of ongoing employees in 2022-23 relative to APS averages. This is particularly the case among more junior employees, which has resulted in two distinct cohorts of staff at the agency. Close to half of the leadership team have spent a large part of their career at the agency, whereas more junior staff have typically spent significantly less time there and in the APS generally.

Taken together, the above factors have posed challenges in recent years related to building and retaining corporate memory and know-how about core functions.

### The agency's skills profile must evolve to support its updated regulatory posture

The Government expects that the OAIC will continue to develop a capable, multidisciplinary workforce with a breadth of technical skills to provide guidance and advice, and to take appropriate regulatory action. There are several capabilities and skillsets that will become more important as the OAIC evolves its regulatory posture, as outlined in chapter 4, and responds to the drivers of change described in chapter 3 – particularly the technological drivers of change.

These critical capabilities and skillsets include:

- cyber security
- understanding of AI and associated practices
- large-scale data breaches and their implications
- data analytics
- forensic investigations

"[We] need more training for staff on new technologies such as AI, and emerging industry practices."

OAIC staff member



- commercial litigation
- industry engagement and education.

While OAIC staff are generally highly capable, many do not have a technological background, which can make it difficult to keep pace with changes in technology. As the privacy and information regulator, it will be vital for the OAIC to possess these skills, as breaches and requests are increasingly tied to data concerns. Staff across the FOI, Dispute Resolution, and Regulation and Strategy branches expressed frustration with the limited training available on these issues.

These skills will need to be acquired through a combination of developing existing staff, hiring new staff with specialist capabilities and knowledge, and leveraging the expertise of other larger regulators that the OAIC partners with. The first step for boosting the skills of existing staff is a refreshed approach to learning and development. Some staff noted that existing learning programs are too generic and there are limited opportunities to acquire the sort of specialist knowledge that will enable the agency to effectively respond to the drivers of change outlined in chapter 3.

As the OAIC moves to its updated regulatory posture it will be essential that these shifts in activity and approach are backed by the correct level and variety of skills. Updates to the agency's strategic workforce plan will help to better facilitate large-scale investigations and fit-for-purpose policy submissions. In the most recent Stay Survey, staff reflected a need for training programs tailored to the roles and responsibilities of the OAIC, and more role-specific training.

"[We need] more focus on subject matter-specific training and professional development opportunities. We seem to rely a lot on general APS/AGD training, which is understandable, but some of it doesn't feel very relevant to the OAIC or Regulation and Strategy. It would be great to have more opportunity to develop additional expertise relevant to our role."

OAIC staff member

## RECOMMENDATION 5

5

The OAIC refresh its strategic workforce plan and learning and development strategy to identify the roles and skills needed to deliver its updated regulatory posture, achieve its purpose and future functionality, and respond effectively to the likely continuing growth in the volume and complexity of its core statutory workload.

## Current induction.<sup>59</sup> practices are inconsistent and not fit for purpose

As noted above, the OAIC has seen both significant growth in overall headcount and high levels of turnover. This means the agency has had and will likely continue to have a high proportion of new staff. This, coupled with the transition to a more dispersed hybrid workforce and the agency's increasingly diverse geographic footprint, means that consistent and effective induction practices and processes will be a critical enabler of effective and efficient operations.

Current induction practices are not fit for purpose. This has posed unnecessary challenges for new staff and led to inconsistencies in how key processes have been applied across the agency.

Induction processes are currently managed by individual branches, with limited central guidance. This model has led to inconsistent practices, with the quality of the induction dependent on the level of knowledge of the staff members responsible for induction. This leads to further inconsistencies in staff processes and use of systems, as knowledge is person-specific rather than agency-specific.

The impact of inconsistent induction practices has been particularly acute in branches with the highest turnover rates (see Table 11) and those with operational teams that rely on consistent, standardised processes to be effective.

The induction program should also touch on the values and expected behaviours of the OAIC to ensure staff expectations are appropriately set and that individuals understand how the agency functions beyond its process-related activities.

As the agency continues to grow, it will be important for new staff to receive appropriate and consistent training, particularly if the agency remains in a hybrid state. Consistent training will ensure that staff who do not work from the office understand the expectations of their work and the systems they are required to use.

“Onboarding and training could be improved. There is very little provided in the way of training. This is done on an ad hoc basis and results in inconsistent processes. Other agencies and organisations have comprehensive training and induction, as well as procedure manuals.”

OAIC staff member

## RECOMMENDATION 6

6

The OAIC develop a consistent, enterprise-wide induction program to ensure consistencies of practice, supporting the agency to achieve its purpose and future functionality and respond effectively to the likely continuing growth in the volume and complexity of its core statutory workload.

<sup>59</sup> Induction refers to all processes completed after laptop assignment, including the 'how to' of the role and training in understanding the OAIC.



## 7.2 Employee experience

### The employee value proposition has equal numbers of pull and push factors

The OAIC has struggled to recruit and retain staff with the right capabilities in recent years. Developing and making good on a compelling employee value proposition (EVP) will be a vital enabler of the OAIC's new strategy and regulatory posture – particularly if the demand for staff with more specialist and in-demand skillsets increases.

The feedback from staff in the APS Census, the OAIC's Stay Survey and workshops conducted for the Strategic Review indicate an equal number of pull and push factors inherent in the OAIC's current EVP.

We have identified areas of strengths and opportunities for improvement (shown in Figure 54) using Nous' EVP canvas. Each element of the EVP canvas is explored in further detail below.

Figure 54 | Elements of the OAIC's employee value proposition



Source: Analysis of Census data, Stay Survey data and feedback from staff workshops

### Most OAIC staff feel included and have a strong sense of connection to their work

The OAIC tends to attract staff who are motivated to work for the agency due to its mission. The majority feel a strong sense of connection to the OAIC and to their work. Most also feel that the agency has an inclusive workplace culture.

Staff are generally positive about the leadership and their supervisors, although there were some criticisms of leadership at more senior levels in the agency. The issue of leadership is explored in more detail in section 7.3.