



**Australian Government**

**Office of the Australian Information Commissioner**

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COVID-19 Response Inquiry Panel  
Department of the Prime Minister and Cabinet

Online lodgement: [www.pmc.gov.au/covid-19-response-inquiry/consultation](http://www.pmc.gov.au/covid-19-response-inquiry/consultation)

## **Submission by the Office of the Australian Information Commissioner to the COVID-19 Response Inquiry**

Dear Panel

The Office of the Australian Information Commissioner (OAIC) welcomes the opportunity to make a submission to the COVID-19 Response Inquiry Panel to inform recommendations that aim to improve Australia's preparedness for future pandemics.

This submission outlines the OAIC's role during the COVID-19 pandemic, and key learnings that can be used to ensure that privacy and access to information are strategic considerations and enabling factors in any future pandemic responses.

### **Overview**

The OAIC is an independent Commonwealth regulator within the Attorney-General's portfolio, established to bring together three functions: privacy functions (protecting the privacy of individuals under the *Privacy Act 1988* (Cth) (Privacy Act) and other legislation), freedom of information (FOI) functions (access to information held by the Commonwealth Government in accordance with the *Freedom of Information Act 1982* (Cth)), and information management functions (as set out in the *Australian Information Commissioner Act 2010* (Cth)).

The COVID-19 pandemic posed unprecedented challenges and the Australian Government needed to respond rapidly, making wide-ranging decisions that had significant impacts across all areas of society, including on public health and the economy. The use of personal information was central to the public health response, facilitating critical data analysis and supporting public health outcomes, while government release of timely and accurate information helped citizens around the world respond and support containment efforts.

Privacy is a fundamental human right, as recognised in Article 12 of the UN Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights (ICCPR).<sup>1</sup> However, the Privacy Act recognises that the right to privacy is not absolute, and privacy rights may need to give way where there is a compelling public interest reason to do so. In this regard, proportionality, reasonableness and necessity are key concepts that must be considered when determining whether a particular impact on privacy is justifiable in the circumstances.

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<sup>1</sup> The right to privacy is also enshrined in many other [international and regional agreements](#).

The COVID-19 pandemic heightened public awareness of the importance of the protection of personal information and access to information, highlighting the need to develop and maintain trust and confidence in government to ensure successful policy outcomes.

## **The role of the OAIC during the COVID-19 pandemic**

The OAIC played a critical role in supporting the Australian Government's response to COVID-19. We worked closely with stakeholders across government and with our domestic and international counterparts to highlight the need to maintain privacy and information access frameworks, through proportionate and pragmatic public health responses, and the proactive release of information which was of paramount importance. Our work contributed to maintaining a principled, clear and consistent approach to the COVID-19 pandemic. In particular, the OAIC worked collaboratively with the Australian Government to establish appropriate privacy safeguards and oversight for the COVIDSafe app, assess and mitigate privacy risks during the rollout of the COVID-19 vaccination program and digital vaccination certificates, and published clear guidance on the importance of secure handling of vaccination information.<sup>2</sup> The OAIC also convened the National COVID-19 Privacy Team with state and territory privacy regulators. The team met regularly throughout the pandemic to consider and provide advice to government on privacy risks and proposals with national implications, such as the collection of personal information for contact tracing purposes.

The OAIC and state and territory privacy commissioners and ombudsmen produced national COVID-19 privacy principles to support a consistent approach to solutions and initiatives designed to address the ongoing risks related to the COVID-19 pandemic. A key principle was purpose limitation which ensured that information collected for a specific purpose related to mitigating the risks of COVID-19, like contact tracing, would not be used for other purposes.

The OAIC also joined with our access to information counterparts to issue a public statement on the continued importance of transparency and FOI during the pandemic.<sup>3</sup> Further, the OAIC engaged proactively with international regulators, including leading the adoption of a resolution at the International Conference of Information Commissioners that resulted in publication of a joint statement supporting the proactive publication of information relating to the COVID-19 pandemic.<sup>4</sup>

## **Recommendations for future responses**

### **Proactive engagement**

To ensure privacy is a core consideration in government decision making during future pandemics, the OAIC strongly recommends proactive engagement and consultation with our office, as well as other privacy regulators and relevant stakeholders. Engagement during the early stages of response development and throughout a pandemic will ensure any government proposals that may have an impact on privacy are reasonable, necessary, and proportionate to achieving a legitimate policy aim.

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<sup>2</sup> See guidance developed for organisations and Australian Government agencies on the OAIC website, [COVID-19](#).

<sup>3</sup> OAIC, [Joint statement on transparency and access to information during the COVID-19 outbreak](#), OAIC website, April 2020.

<sup>4</sup> OAIC, [ICIC endorses OAIC resolution on proactive publication](#), OAIC website, June 2021.

Government policy solutions that incorporate appropriate privacy safeguards, protect personal information and minimise privacy risks are also critical to generating the public trust and confidence required for their successful implementation.

### **Appropriate privacy safeguards**

Part of taking a proportionate approach is considering what safeguards can be implemented to mitigate privacy risks. For example:

- **Implementing a ‘privacy by design’ approach**, by which privacy is designed into government responses from the start, will ensure objectives are achieved in ways that are less privacy intrusive.
- **Ensuring government responses adopt the data minimisation principle**, which limits the collection of personal information, including sensitive health information, to the minimum information reasonably necessary to achieving the legitimate purpose.
- **Ensuring purpose limitation is adopted in any frameworks established to collect personal information**, so that information is generally not used for other purposes and is destroyed once it is no longer needed.
- **Ensuring that government policy decisions take into account the security of personal information** and ensure it is protected from misuse, interference and loss, and from unauthorised access, modification or disclosure.

### **Coordination and collaboration**

The COVID-19 pandemic highlighted the need for comprehensive privacy laws to ensure the protection of personal information. For instance, early in the pandemic we observed the rapid development and rollout of contact tracing apps by app developers that may not have been covered by the Privacy Act due to the small business exemption, which raised privacy risks. The OAIC supports the proposal to remove the small business exemption as part of the Privacy Act Review. More broadly, Commonwealth, State and Territory governments are increasingly working together on national initiatives that involve sharing information across jurisdictions including in the response to the pandemic. In these circumstances, it’s critical that there are nationally consistent privacy laws to ensure personal information is subject to similar protections across jurisdictions and to provide clarity and simplicity for regulated entities and the community. To this end, one of the objects of the Privacy Act is to provide the basis for nationally consistent regulation of privacy and the handling of personal information. As part of the current Privacy Act Review the Government also agrees in-principle that a working group should be convened to work towards harmonising key elements of Commonwealth and state and territory privacy laws, with the forward work agenda for the working group subject to agreement with states and territories (proposal 29.3).

### **Appropriate funding of oversight bodies**

Ensuring sustainable funding of our office and other important oversight bodies will also be essential to ensuring effective performance of our ongoing roles and any additional responsibilities resulting from future pandemics.

### **Support for proactive publication and timely decision making**

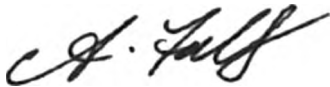
Agencies are encouraged to develop strategies to support sudden increases in access requests and timely decision making, including developing organisational capability to respond to

requests within legislative timeframes and identifying information that can be proactively published.

In future pandemics, proactive publication of information should be supported and implemented by governments. Recognising the role that access to information has in building community trust during times of crisis is critical. Public authorities make significant decisions which affect public health, civil liberties and economic participation. The importance of good record-keeping, transparency and access to information is therefore amplified in the context of any global pandemic.

If we are able to be of further assistance to the Panel please contact Stephanie Otorepec, Director on [REDACTED] or [REDACTED] and copy [REDACTED]

Yours sincerely



Angelene Falk  
Australian Information Commissioner  
Privacy Commissioner

20 December 2023