

29 March 2019

Hon Andrew Little  
Minister of Justice  
Parliament Buildings  
WELLINGTON

Dear Minister

## **FOUR MONTHLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD 1 NOVEMBER 2018 TO 28 FEBRUARY 2019**

### **Highlights**

- Hosted three international events:
  - the 64<sup>th</sup> meeting of the International Working Group on Data Protection in Telecommunications (“Berlin Group”) in Queenstown, 29-30 November 2018
  - the 50<sup>th</sup> Asia Pacific Privacy Authorities (APPA) Forum in Wellington, and
  - an associated public event, the International Privacy Forum, 3-4 December 2018.
- Hosted two Sir Bruce Slane Memorial lectures (Wellington and Auckland) on 6 and 8 November, given by the now Chief Justice, Dame Helen Winkelmann. The lectures marked the 25<sup>th</sup> anniversary of the Privacy Act.
- Released our findings into the Sensible Sentencing Trust’s incorrect listing of a man as a convicted paedophile.

### **Dispute resolution**

We responded to 5,366 enquiries during the eight month period to 28 February 2019. Of these, 2,347 enquiries were handled in-house and a further 3,019 were handled through the call management centre.

We closed 607 investigations in the eight month period to 28 February 2019 (an increase of 19% year on year) and settled 58% of them (351), keeping above the 40% closure rate KPI.

Ninety-one percent of complaints were determined in under six months. This is on track to meet the of the KPI of 10% of files older than six months at year end.

In December 2018, we published our findings in an investigation into publications made by the Sensible Sentencing Trust (SST). We found that SST had interfered with a complainant's privacy by wrongly labelling him as a convicted paedophile. The complaint has been referred to the Director of Human Rights Proceedings.

### **Policy related activities**

Our inquiry under section 13(1)(m) into the Ministry of Social Development's use of information collection powers under section 11 of the Social Security Act 1964 began in October 2018. The Inquiry has progressed well over this period and staff are now in the report writing phase. The Inquiry will look at the Ministry's application of the Code in practice and any potential infringement on the privacy of individuals resulting from it. The Inquiry aims to report back by May 2019.

We commented on those parts of the Government's legislative programme that have privacy implications. This included public consultations by agencies on proposals for:

- the review of the Protected Disclosures Act 2000, and
- the review of the Statistics Act 1975.

We also submitted to the Justice Select Committees on the Criminal Cases Review Commission Bill.

We are monitoring and assisting the development of seven Approved Information Sharing Agreements and several other information sharing agreements being developed by agencies. An agreement between the Ministry of Social Development and the New Zealand Customs Service will be implemented soon, with one objective being to ensure that no debts are accrued by pensioners who leave New Zealand for over 28 days while receiving the Winter Energy Payment.

The Gang Intelligence Centre agreement commenced in January and I intend to review the operation of that agreement after one year of operation.

The Government Inquiry into Mental Health and Addiction reported back and has recommended consolidating and updating guidance on sharing information and partnering with families and whanau. We have offered to assist the Ministry of Health with this initiative and are looking to strengthen our engagement with the health sector in the coming months.

### **Codes of Practice**

The first of three tranches of amendments to the Credit Reporting Privacy Code will come into force on 1 April 2019. This first tranche includes amendments to allow for easier credit freezing, stricter controls around marketing and direct marketing to consumers, a prohibition on cross-selling, and the use of credit information to facilitate the return of money owed. The subsequent tranches come into effect on 1 July and 1 October 2019.

## **International activities**

In late November we hosted the 64<sup>th</sup> meeting of the International Working Group on Data Protection in Telecommunications. Regulators and participants from 18 jurisdictions attended to discuss issues such as artificial intelligence, location tracking, smart devices for children and protecting the privacy of children in online services. For the next meeting in April we are preparing a paper that discusses the issue of data portability from a first principles perspective.

In December we hosted the 50<sup>th</sup> Asia Pacific Privacy Authorities (APPA) Forum, which you opened in Parliament. The APPA Forum provides privacy authorities an opportunity to form partnerships, discuss best practices and share information. The Forum included presentations on data breach notification regimes and systems across the Asia-Pacific region and the ethical processing of data by advanced analytics and artificial intelligence. The Government Chief Privacy Officer and Deputy Government Statistician also presented on the algorithmic census that the New Zealand Government has undertaken.

## **Privacy law reform**

We continued to work closely with Ministry officials to provide detailed comment on outstanding issues and technical drafting matters, often in tight timeframes, to support their advice to the Select Committee.

This was both in respect of the introduction version of the Bill (for the Department Report, part 1 and part 2, provided in November 2018) and the revised tracked version of the Bill (for the supplementary advice to the Justice Committee in February 2019). This work included consideration of the extraterritorial application of the Bill, cross border provisions, the new privacy breach notification scheme, and other technical matters.

We continued ongoing discussions with Ministry officials on the important matter of the appropriate process for whitelisting countries that provide comparable privacy safeguards to New Zealand, to support the new cross border disclosure principle.

## **Communications**

Our annual report for 2018 was completed and presented to the House during this reporting period.

Our media enquiries and requests for presentations to external groups continue at high levels.

There is good uptake of our suite of free e-learning modules, particularly the shorter 30-minute modules, Privacy ABC and Health ABC, with over 8,000 users in those two modules alone.

## **Outreach**

We were pleased to host two Sir Bruce Slane Memorial lectures (Wellington and Auckland on 6 and 8 November), given by the now Chief Justice, Dame Helen Winkelmann. The lectures marked 25 years of the Privacy Act and commemorated Sir Bruce Slane's singular

contribution to the development of privacy law in New Zealand. Both lectures were very well supported by the judiciary, legal academics and the wider legal community.

The International Privacy Forum held in Wellington on 4 December was structured around the opportunity presented by visiting APPA data protection authorities and experts. The half-day conference had a capacity audience with over 200 delegates, and audience members were highly engaged. Topics included an update on technology developments by a Google representative; an outline of research into the operation of the contentious social credit system in China and the UK Information Commissioner, Elizabeth Denham, giving an update on GDPR and its impact in the light of Brexit.

This event was run on a commercial basis to offset the expense of taking our turn to host two other international meetings. It was a financial success in that in addition to fully covering the expenses of those other meetings, it returned a reasonable profit.

### **Financial report**

Equity is lower than the corresponding period last year by \$126k. This is as a result of cash balances being approximately \$325k lower, due to significant capital expenditure in the first half of the year.

The net surplus to date is tracking below budget by approximately \$30k. This is comparable to a \$48k variance to budget at the end of the previous month. The variance is a direct result of not receiving the \$126k transition income aligned to the introduction of the Bill and operating expenditure tracking lower than budget by \$72k.

The forecast to the year end is a deficit of \$101k against a budgeted deficit of \$72k. This forecast of \$101k does not take into account the potential receipt of transition income if received prior to year-end.

Yours sincerely



John Edwards  
**Privacy Commissioner**

Encl:   Appendix A:   Financials for period ending 28 February 2018  
          Appendix B:   Performance against Statements of Service Performance - Year to Date  
          Appendix C:   Trend Analysis

## Appendix A: Financials for period ending 28 February 2019

### Statement of Comprehensive Income For the 8 Months to 28 February 2019

Prev. Year YTD Actual \$000		February 2019 YTD Actual \$000	February 2019 YTD Budget \$000	YTD Var \$000	YTD Var %	Year-End Outlook \$000	Year-End SPE Forecast \$000
	<b>Revenue</b>						
3,313	Revenue from Crown	3,313	3,439	(126)	(4)	5,096	5,096
200	Other Income	221	195	26	13	223	197
24	Interest	18	20	(2)	(10)	28	30
<b>3,537</b>	<b>Total revenue</b>	<b>3,552</b>	<b>3,654</b>	<b>(102)</b>	<b>3</b>	<b>5,347</b>	<b>5,323</b>
	<b>Expenditure</b>						
45	Marketing	36	51	(15)	(29)	118	139
-	Audit Fees	-	-	-	-	30	30
131	Depreciation	149	162	(13)	(8)	240	252
277	Rental	278	281	(3)	(1)	419	421
525	Operating	738	693	45	6	1,039	940
2,343	Staff Costs	2,323	2,409	(86)	(4)	3,511	3,613
<b>3,321</b>	<b>Total expenditure</b>	<b>3,524</b>	<b>3,596</b>	<b>(72)</b>	<b>(2)</b>	<b>5,357</b>	<b>5,395</b>
<b>216</b>	<b>Net surplus / (deficit)</b>	<b>28</b>	<b>58</b>	<b>(30)</b>	<b>(52)</b>	<b>(10)</b>	<b>(72)</b>

### Statement of Financial Position

	February 2019 Actual \$000	February 2019 Budget \$000	YTD Var \$000	Year-End Outlook \$000	Year-End SPE Forecast \$000
<b>ASSETS</b>					
<b>Current Assets</b>					
Cash & Cash Equivalent	871	1,071	(200)	807	743
Debtors and Other Receivables	85	13	72	49	26
Inventory	18	25	(7)	18	25
Prepayments	45	25	20	60	25
<b>Total Current Assets</b>	<b>1,019</b>	<b>1,134</b>	<b>(115)</b>	<b>934</b>	<b>819</b>
<b>Current Liabilities</b>					
Creditors and other payables	139	135	4	139	135
Employee Entitlements	139	230	(91)	179	230
<b>Total Current Liabilities</b>	<b>278</b>	<b>365</b>	<b>(87)</b>	<b>318</b>	<b>365</b>
<b>Working Capital</b>	<b>741</b>	<b>769</b>	<b>(28)</b>	<b>616</b>	<b>454</b>
<b>Non-Current Assets</b>					
Property, Plant and Equipment	310	355	(45)	422	566
Intangible Assets	149	240	(91)	144	208
Capital Work in Progress	26	-	26	-	-
<b>Total Non-Current Assets</b>	<b>485</b>	<b>595</b>	<b>(110)</b>	<b>566</b>	<b>774</b>
<b>Non-current Liabilities</b>	<b>18</b>	<b>20</b>	<b>(2)</b>	<b>12</b>	<b>14</b>
<b>Net Assets</b>	<b>1,208</b>	<b>1,344</b>	<b>(136)</b>	<b>1,170</b>	<b>1,214</b>

	February 2019	February 2019		Year-End	Year-End
	Actual	Budget	YTD Var	Outlook	SPE Forecast
	\$000	\$000	\$000	\$000	\$000
<b>Public Equity</b>					
Opening Balance	1,180	1,286	(106)	1,180	1,286
Accumulated Surplus	28	58	(30)	(10)	(72)
<b>Total Public Equity</b>	<b>1,208</b>	<b>1,344</b>	<b>(136)</b>	<b>1,170</b>	<b>1,214</b>

**Statement of Cash Flows  
As at 28 February 2019**

	Feb 2019	Feb 2019	Year-End	Year-End
	Actual	Budget	Outlook	SPE Forecast
	\$000	\$000	\$000	\$000
<b>Cash Flows from Operating Activities</b>				
<i>Cash was Provided from:</i>				
Government Grant	3,313	3,439	5,096	5,096
Other Income	173	191	223	193
Interest	18	20	28	30
	<b>3,504</b>	<b>3,650</b>	<b>5,347</b>	<b>5,319</b>
<i>Cash was Applied to:</i>				
Payments to Suppliers	1,095	1,047	1,671	1,557
Payments to Employees	2,396	2,402	3,545	3,606
Payments of GST	(38)	(24)	(26)	(11)
	<b>3,453</b>	<b>3,425</b>	<b>5,190</b>	<b>5,152</b>
<b>Net Cash Flow applied to Operating Activities</b>	<b>51</b>	<b>225</b>	<b>157</b>	<b>167</b>
<b>Cash Flows from Investment Activities</b>				
Cash was applied to				
Purchase of Fixed Assets	231	320	401	590
<b>Net Cash flows applied to Investing Activities</b>	<b>(231)</b>	<b>(320)</b>	<b>(401)</b>	<b>(590)</b>
Cash was Provided from:				
Sale of Fixed Assets	-	-	-	-
<b>Net Cash Flow from Investment Activities</b>	<b>(231)</b>	<b>(320)</b>	<b>(401)</b>	<b>(590)</b>
<b>Net Increase/(Decrease) in Cash Held</b>	<b>(180)</b>	<b>(95)</b>	<b>(244)</b>	<b>(423)</b>
<b>Cash brought forward</b>	<b>1,051</b>	<b>1,166</b>	<b>1,051</b>	<b>1,166</b>
<b>Closing cash carried forward</b>	<b>871</b>	<b>1,071</b>	<b>807</b>	<b>743</b>
<b>Cash made up of:</b>				
Cash on hand	-	-	-	-
National Bank - Cheque	471	271	507	43
National Bank - Deposit	400	800	300	700
	<b>871</b>	<b>1,071</b>	<b>807</b>	<b>743</b>

## **Appendix B: Performance against Statements of Service Performance - Year to Date**

### *Output 1 - Guidance, education and awareness*

<b>Measure</b>	<b>Achieved As at 28 February</b>	<b>Expectation As at 28 Feb (as per SPE)</b>
<b>Guidance, education and awareness: Quantity</b>		
Number of people completing education modules on the online system	5,695	2,334
Presentations at conferences / seminars	68	60
Public enquiries received and answered	5,366	5,000
Media enquiries received and answered	187	134
<b>Guidance, education and awareness: Quality</b>		
Website contains all current published guidance from the Privacy Commissioner, and additional resources to support compliance with the Act.	Achieved	Achieved
The office actively engages with a wide range of stakeholders both nationally and internationally through our policy, dispute resolution and public affairs work.	Achieved	Achieved
The percentage of respondents to the annual stakeholder survey who indicate, where applicable, that the guidance materials reviewed on the website were useful and met their needs.	Measured at year-end	85%
<b>Guidance, education and awareness: Timeliness</b>		
Respond to all enquiries within 2 working day	93%	100%

### *Output 2 - Policy and Research*

<b>Measure</b>	<b>Achieved As at 28 February</b>	<b>Expectation As at 28 Feb (as per SPE)</b>
<b>Policy and Research: Quantity</b>		
The number of Consultations, Submissions and Office Projects completed in the year <sup>1</sup>	72	100

<sup>1</sup> This includes draft Bills, Cabinet Papers, Privacy Impact Assessments, consultations carried out under a statutory requirement to consult with the Privacy Commissioner, early consultations on new policy proposals, select committee submissions, reports to ministers and research projects. This

Measure	Achieved As at 28 February	Expectation As at 28 Feb (as per SPE)
Identifiable progress in international efforts in which we are actively engaged to work towards more sustainable platforms for cross border co-operation	Achieved	Achieved
<b>Policy and Research: Quality</b>		
The percentage of recipients of policy advice who are satisfied with the service they received from the Privacy Commissioner	Measured at year-end	85%
Our participation in the law reform process is valued by the Ministry of Justice	Measured at year-end	Achieved
The percentage of externally reviewed policy, information sharing and information matching files that are rated as 3.5 out of 5 or better for quality. <sup>2</sup>	Measured at year-end	85%
<b>Policy and Research: Timeliness</b>		
The percentage of policy files where advice was delivered within agreed timeframes	93%	100%
Responses to requests for input into legislative reform proposals are made available within agreed timelines.	Measured at year-end	100%

*Output 3 – Information sharing/matching*

Measure	Achieved As at 28 February	Expectation As at 28 Feb (as per SPE)
<b>Information sharing/matching: Quantity</b>		
The number of information matching programmes monitored under Part 10 of the Privacy Act	54	50
The number of new Approved Information Sharing Agreements received for consultation under s96O of the Privacy Act	2	2
The number of formal reports produced that relate to information sharing or information matching programmes, under sections 96P, 96X, 96O or 106 of the Privacy Act	3	3

measure is a combination of 3 separate measures reported on in 16/17 and included in the 17/18 SPE. Comparative figures represent the addition of these 3 separate results.

<sup>2</sup> This target has been combined with a similar target that was included in Output 3 in the prior year and the 17/18 SPE.



Measure	Achieved As at 28 February	Expectation As at 28 Feb (as per SPE)
The number of proposals consulted on involving information sharing or matching between government agencies, completed during the year	16	20

**Better Public Services: Quality**

The percentage of recipients of information sharing and matching advice that are satisfied with the service they received from the Privacy Commissioner	Measured at year-end	85%
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**Better Public Services: Timeliness**

The percentage of information sharing and matching files where advice was delivered within agreed timeframes	100%	100%
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*Output 4 - Compliance*

Measure	Achieved As at 28 February	Expectation As at 28 Feb (as per SPE)
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**Compliance: Quantity**

Number of complaints received	523	600
Number of data breach notifications received	148	87

**Compliance: Quality**

The percentage of complaints files closed by settlement between the parties	58%	40%
Amendments to codes of practice meet all statutory requirements	Achieved	100%
The percentage of externally reviewed complaints investigations that are rated as 3.5 out of 5 or better for quality	To be reported at year-end.	85%
Recommendations following the Credit Reporting Privacy Code review are actioned.	Achieved As reported in the October report, amendments were proposed to the Credit Reporting Privacy Code as a result of the review.	Achieved

Measure	Achieved As at 28 February	Expectation As at 28 Feb (as per SPE)
The percentage of open files greater than 6 months old at the year end	Measured at year end.	10%

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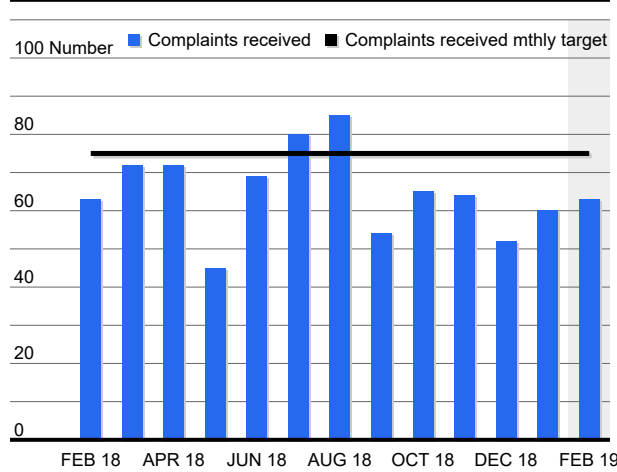
# **OFFICE OF THE PRIVACY COMMISSIONER**

## **KPI TREND REPORT - FEBRUARY 2019**

Prepared 18 March 2019

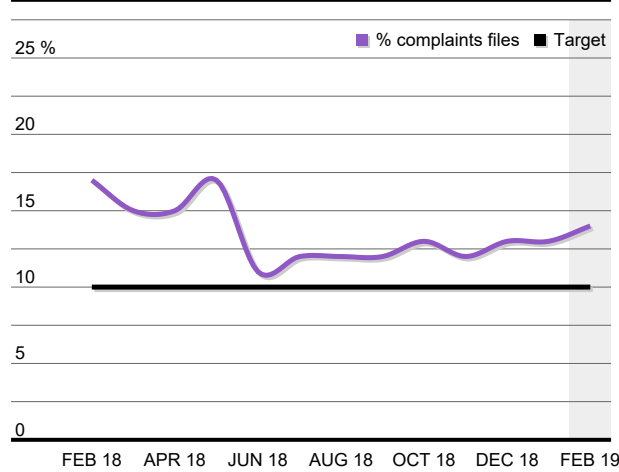
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**Complaints received**



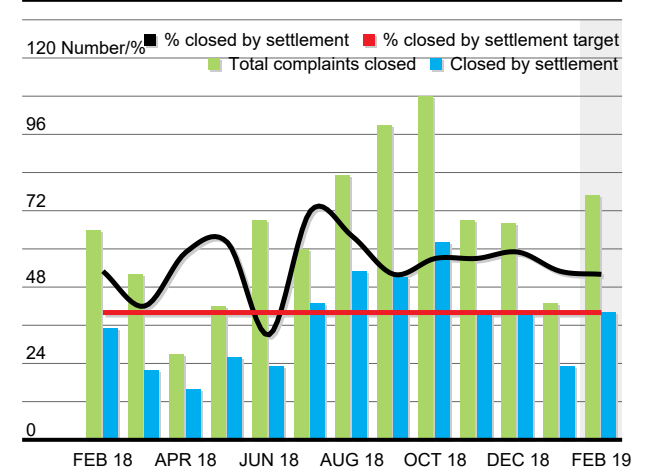
To show the trend in complaints received on a monthly basis across the year.

**% complaints greater than 6 mths old**



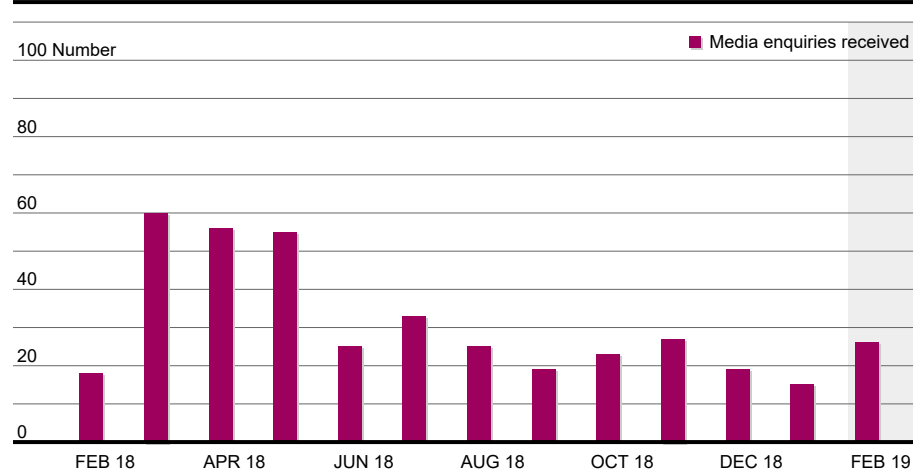
To show the % of complaints work in progress greater than 6 months old against target.

**Closure through settlement**



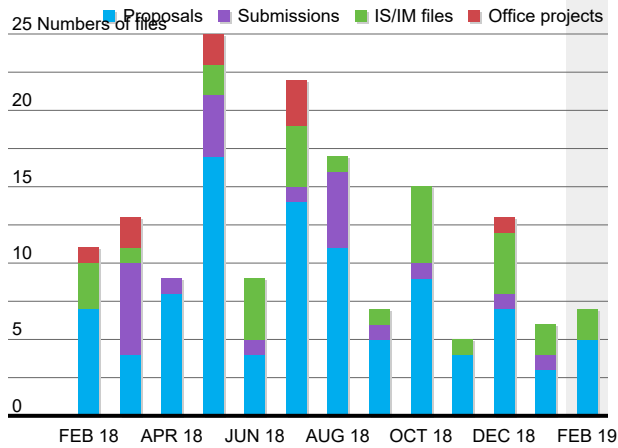
To show the number and % of files closed through settlement between the parties.

**Media Enquiries received**



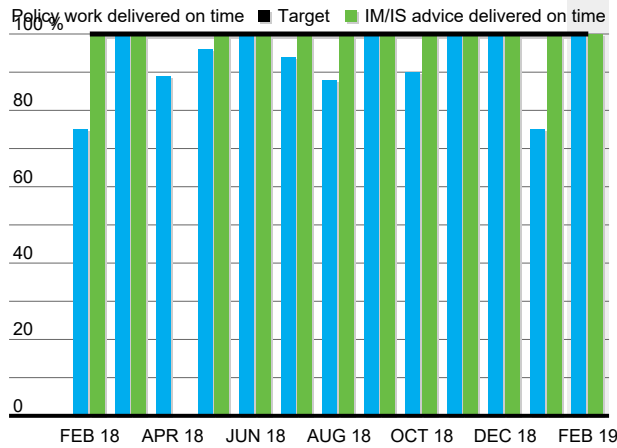
To show the number of media enquiries by month.

**Policy files closed by category**



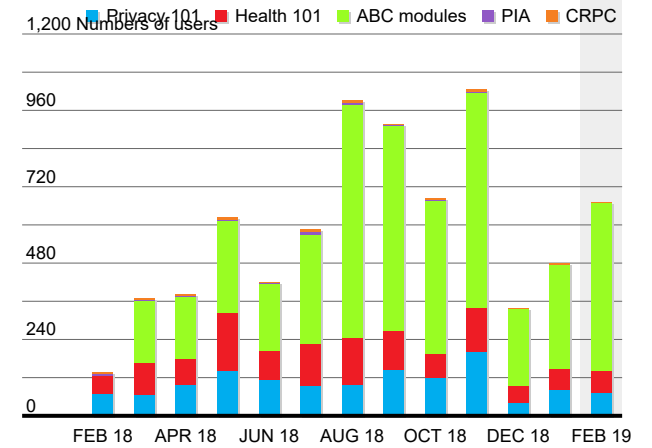
To show the number of policy files that have been completed during the month. The categorisation of these is as per the SPE.

**Policy files completed within timeframes**



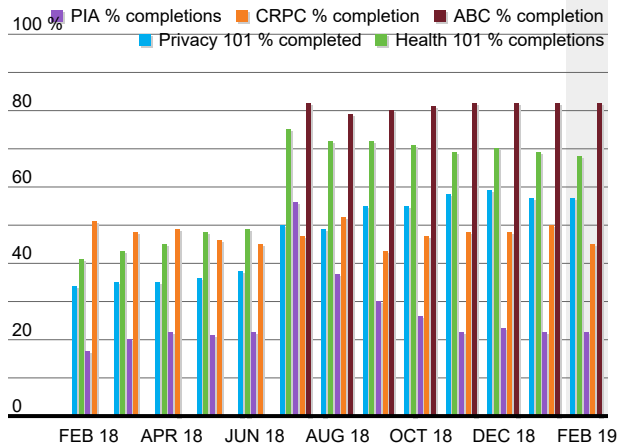
To highlight the timeliness of completion of the Office's policy work. The target (as set in the SPE) is 100%.

**Number of on-line module completions**



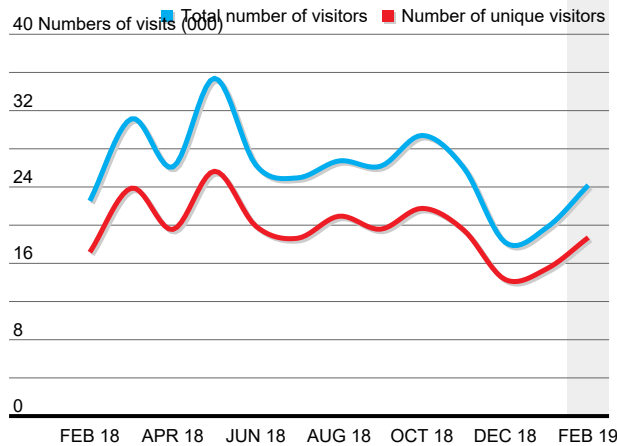
Numbers of monthly module completions.

**% completion of on-line modules**



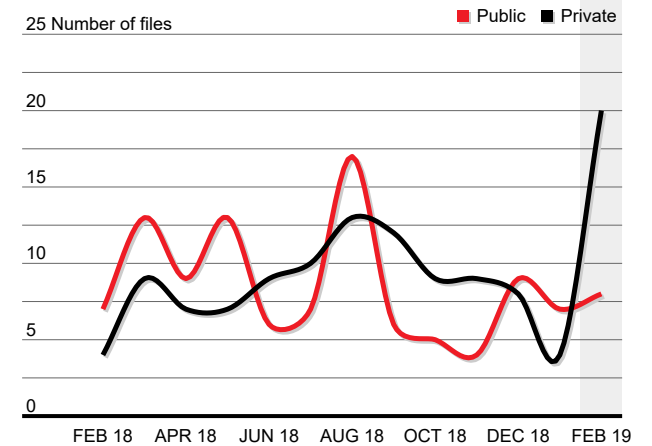
Cumulative % of users completing on-line modules. Results are shown as cumulative over the course of the financial year.

**Visits to the website**



To show the number of visitors to the website on a monthly basis over the past 12 months.

**Breach notifications**



This shows the trend in breach notifications relating to public and private entities.