

Freedom Of Information

INFORMATION COMMISSIONER
WESTERN AUSTRALIA
ANNUAL REPORT TO THE
PARLIAMENT 2005/06





OFFICE OF THE
INFORMATION COMMISSIONER

DEAR MR PRESIDENT
DEAR MR SPEAKER

In accordance with the provisions of the *Financial Administration and Audit Act 1985* and the *Freedom of Information Act 1992*, I submit my report for the year ended 30 June 2006 which has been prepared in compliance with the provisions and reporting requirements of both Acts.

A handwritten signature in blue ink that reads 'Daryl Wookey'.

D A WOOKEY
A/INFORMATION COMMISSIONER
28 September 2006

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FOREWORD

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FOREWORD



Darryl Wookey

Despite some negative publicity in recent times concerning the effectiveness or otherwise of the *Freedom of Information Act 1992* ('the FOI Act'), the statistics in this, the 13th Annual Report of the Information Commissioner to the Parliament on the operation of the FOI Act in Western Australia, suggest that in Western Australia the legislation is being used and is working reasonably well.

While the number of applications to government agencies has increased steadily from 3339 at the end of the first full financial year of operation of the FOI Act (1994/95) to 9624 in the 2005/06 financial year, the percentage of applications decided by agencies which have resulted in a complaint to the Information Commissioner has steadily

decreased, from approximately 4% in 1994/95 to only 1.35% in 2005/06. Consistent with previous years, only 9% of decisions made by agencies on access applications in the reporting period were to refuse access. 30% were to give access to edited copies of documents and 61% of decisions made by agencies were to give access in full. Access, in some form, was given by agencies in response to approximately 91% of all access applications dealt with.

Although the FOI Act is from time to time criticized for being overly-bureaucratic – and in some instances it is not administered as effectively or efficiently as it should be by agencies – many of the processes built into the Act are designed to protect essential public interests. The public interest in the openness and accountability of government is, of course, a significant one and one that the FOI Act is designed to further. However, there are other public interests that must be taken into account when dealing with applications for access to documents other than documents containing only personal information about the applicant. For example, the protection of the personal privacy of other people about whom government-held documents may contain information is also a significant public interest. The FOI Act is designed to call government to account, not to call private individuals to account or unnecessarily intrude upon their privacy unless an overwhelming public interest calls for it. Similarly, the public interest in the efficient and effective operation of government is a strong one, to be balanced against the public interest in openness and accountability.

Although FOI legislation in Australia may have its shortcomings, it is difficult to envisage a much simpler regime that would protect the competing public interests as well as promoting openness and accountability of government. What is often not recognized by critics of the legislation is that, since its introduction in 1993, there has also been a significant amount of policy development undertaken in agencies, as a result of which significantly more information than was available prior to the operation of the legislation is now made routinely available without the need for an application under the FOI Act. My office continues to promote and encourage ongoing policy development of that nature, to avoid the unnecessary complications that arise when dealing with applications for certain kinds of information under the FOI Act. Some agencies are more easily encouraged in this regard than others.

Of course, there continue to be instances in which agencies do not discharge their duties under the FOI Act as they should. One particular complaint dealt with this year, in which I formed the opinion that there was evidence that an officer of an agency had been guilty of a breach of duty in the administration of the FOI Act, is reported on in the section of this report dealing with *External Review*. I consider the publication of the outcome of such matters and my formal decisions on

complaints to be an important tool in not only bringing agencies to account for the manner in which they deal with applications under the FOI Act but also in educating agencies and members of the public as to their respective responsibilities and rights under the legislation.

A project was also commenced in the reporting period to ascertain the current level of compliance by agencies with the requirement in the FOI Act that they publish up-to-date information statements annually, to assist agencies to ensure that they are complying with that requirement. The overarching purpose of the project is to ensure that the FOI Act's objects of enabling the public to participate more effectively in governing the State and making the persons and bodies that are responsible for State and local government more accountable to the public are being furthered by the provision of comprehensive up-to-date information about the structure, operations and accessibility of agencies. The results of the first stage of that project are reported on in the section of this report dealing with *Advice and Awareness*.

As I reported in my last two annual reports, I was first appointed Acting Information Commissioner in November 2003 for a period of up to 12 months pending legislation to give the office responsibilities under a proposed new privacy law and to amalgamate the office with that of the Ombudsman. I have since been appointed to two further 12 month terms as Acting Information Commissioner and the proposed legislation has not yet been introduced into the Parliament. I understand, however, that it is imminent. As I have also indicated in my previous annual reports, it is to be hoped that the proposal will ensure the retention of the features of this office which have resulted in it being recognized nationally and internationally as a preferred model for efficient, effective, inexpensive, timely and accessible external review of FOI decisions, and I look forward to the opportunity to comment on the draft legislation.

As was reported in the press during the year the Salaries and Allowances Tribunal, without notice and without giving reasons, chose to downgrade the classification of the office (and two other independent accountability offices) during the reporting period. As was reported by a number of commentators, it does not augur well for the preservation of the independence and effectiveness of the accountability offices of this State, which are designed to be independent of the executive government, and raises questions about the appropriateness of the classification of such positions being dealt with in the same way as those of chief executive officers of government departments and other officers of the executive government, in part on advice from the executive and without the input of the Parliament, to whom the accountability officers report directly.

In terms of the work of the office this year, my dedicated and experienced staff of 9 officers continue to maintain high levels of effectiveness and efficiency in both the external review and advisory services delivered throughout the year. Pleasingly, the percentage of complaints resolved by conciliation further increased from 66% last year to 72% this year. The level of satisfaction of agencies with the advice and guidance provided was, consistent with previous years, 98% and the satisfaction of parties to complaints with the external review process was maintained at 85%.

It is to their credit that this high standard of performance by the staff of the office has been maintained throughout 3 years of uncertainty as to the future of the office and I thank them for their efforts.

Once again, we look forward to the challenges of the year ahead.