



Office of the **Information Commissioner**

ANNUAL REPORT 2008-2009



Office of the **Information Commissioner**

DEAR MR PRESIDENT
DEAR MR SPEAKER

ANNUAL REPORT 2008-2009

In accordance with the provisions of the *Financial Management Act 2006* and the *Freedom of Information Act 1992*, I submit my report for the year ended 30 June 2009 which has been prepared in compliance with the provisions and reporting requirements of both Acts.

A handwritten signature in blue ink, appearing to read 'Sven Bluemmel'.

Sven Bluemmel
INFORMATION COMMISSIONER

23 September 2009

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OVERVIEW

1. OVERVIEW



1.1 COMMISSIONER'S FOREWORD

I am pleased to present my first annual report as Western Australia's Information Commissioner.

The rights of citizens to access government information remains a fundamental element of a robust democracy. This is reflected in the objects of the *Freedom of Information Act 1992* which are to enable the public to participate more effectively in governing the State, and to make State and local government bodies and officers more accountable to the public. There can scarcely be a more important goal in ensuring good government for the people of Western Australia. I am privileged to play a role in helping to achieve such important outcomes.

“The rights of citizens to access government information remains a fundamental element of a robust democracy.”

The year saw a tremendous amount of progress made by my office in addressing a large backlog of complaints. As a result, the average age of complaints decreased by a considerable margin. This was achieved against a backdrop of significant uncertainty about future arrangements for the office and is a credit to the entire team. Particular thanks must also go to my predecessor, Acting Commissioner John Lightowers, who showed great focus and leadership in difficult times to achieve these results. I am pleased to report that the uncertainty noted above has been addressed, allowing my office to focus on achieving its mission in the short, medium and long term.

Contrasting with the progress made during the year is the significant increase in the number of applications for external review being made to my office since December 2008. In the year to June 2009, my office received 180 applications for external review. This compares to 103 applications lodged in the previous year. As a direct result of this increase, there were 84 matters remaining before me on external review

as at 30 June 2009, an increase of some 180% over the previous year. Timeframes are currently holding up well, with complaints on average taking just under 79 days to be resolved by my office. Unfortunately this is due to the fact that the recent increase in complaints has not yet made its presence fully felt. It is likely that these figures will deteriorate significantly over the coming year; however, I will continue to do my utmost to resolve complaints as quickly and effectively as possible.

Information available to me indicates a high level of technical compliance by agencies in respect of their obligations under the Act. However, based on information gathered through the external review process, I am growing concerned that this is not always done in the spirit which Parliament originally envisaged. This concern is based on a number of observations. The first is that some agencies appear to view the Act as the primary or sole mechanism for making government information available. The Act itself makes it clear that it is not intended to discourage agencies from making information available

outside the processes prescribed by the Act, if this can properly be done. I believe that in many cases, an administrative process for making information available to the public, either proactively or on request, is preferable to making such information available only under the freedom of information process.

A second observation is that agencies, on occasion, focus on the procedural aspects of a freedom of information request to the exclusion of looking for an outcome which achieves the objects of the Act. While it is important for agencies to comply with procedural aspects laid down by the legislation, there are cases where much time and effort can be saved by an agency engaging in early and meaningful dialogue with an access applicant to try and negotiate an outcome which meets the applicant's needs. This is particularly important in cases where the access application is broad or ill-defined, or where the applicant has little or no understanding of government processes.

Third, the Act requires agencies (other than Ministers) to publish up to date Information Statements. These statements need to outline the functions and structure of each agency; the kinds of documents held by the agency; arrangements which the agency has in place to allow public participation in the formulation of policy; and the agency's mechanisms for giving members of the public access to documents held by that agency. Again, the level of technical compliance with this requirement is high, however the quality of Information Statements varies enormously.

Some Information Statements are useful tools for members of the public and genuinely contribute

to greater transparency and accountability. Other Information Statements are less approachable and may be quite overwhelming or irrelevant to members of the public, either due to their sheer length and complexity, or to the lack of relevant information. I believe that much can be gained by highlighting effective Information Statements and sharing the lessons behind those statements with other agencies. I will encourage such cooperation wherever I can.

Notwithstanding the challenges ahead, freedom of information in Western Australia remains on a firm footing - as illustrated by the statistics presented in this report - and will continue to play an important part in our robust and vibrant democracy. I look forward to working with my team to ensure that we build on the solid foundations set by my predecessors in contributing to greater government transparency and accountability.

Sven Bluemmel
Information Commissioner

“Notwithstanding the challenges ahead, freedom of information in Western Australia remains on a firm footing and will continue to play an important part in our robust and vibrant democracy.”

1.2 OPERATIONAL STRUCTURE

The office of Information Commissioner is established by s.55(1) of the *Freedom of Information Act 1992* (the Act) and the occupant is directly accountable to Parliament for the performance of the functions prescribed by the Act. The office is independent of executive government and reports directly to the Parliament and not to, or through, a Government Minister. The Attorney General is the Minister responsible for the administration of the Act, but has no specific role under the legislation.

The main function of the office is to provide independent external review of agencies' decisions by dealing with complaints about decisions made by agencies under the Act.

Other responsibilities prescribed by the Act include:

- ❖ ensuring that agencies are aware of their responsibilities under the Act [s.63(2)(d)];
- ❖ ensuring members of the public are aware of the Act and their rights under it [s.63(2)(e)];
- ❖ providing assistance to members of the public and agencies on matters relevant to the Act [s.63(2)(f)]; and
- ❖ recommending to Parliament legislative or administrative changes that could be made to help the objects of the Act be achieved [s.111(4)].

The Mission Statement and desired outcome reflect the functions and the broad ideals of openness, accountability and responsibility behind the Freedom of Information (FOI) legislation.

MISSION

Public understanding and confidence in the decision-making process of government agencies through access to relevant information

The following principles or values are part of the corporate philosophy of the office:

- ❖ Being accepted by participants as an independent and impartial review authority.
- ❖ Being recognised by agencies as a model of “best practice” for the FOI complaint review process.
- ❖ Serving as an example to agencies of accountability and responsibility.

RELEVANT LEGISLATION

- ❖ *Freedom of Information Act 1992*
- ❖ *Freedom of Information Regulations 1993*

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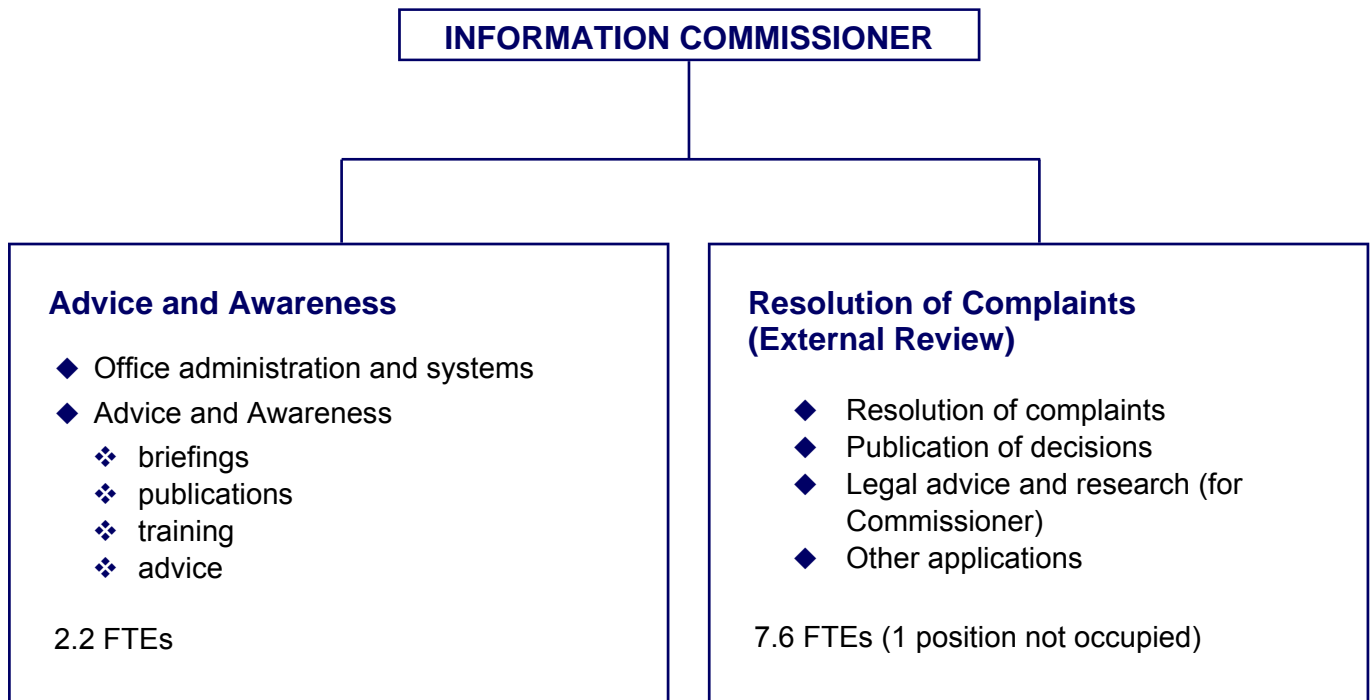
STAFF



Back row L to R: Grace Grandia, Advisory/Projects Officer; Anne Marshall, A/Principal Legal Officer; Sven Bluemmel, Information Commissioner; Rachel Crute, Legal Officer (Research and Investigations); Kim Bracknell, Information Services Manager.

Front row L to R: Michelle Fitzgerald, Executive Officer; Vivien Hillyard, Investigations Officer; Tony Pruyn, Senior Investigations Officer; Sylvie de Laroche, Administrative Assistant.

OFFICE STRUCTURE



1.3 PERFORMANCE MANAGEMENT FRAMEWORK

1.3.1 Outcome Based Management Framework

Desired Outcome

The primary desired outcome is access to documents and observance of processes in accordance with the Act.

This outcome contributes to the Government Goals of Financial and Economic Responsibility, Outcomes Based Service Delivery and Social and Environmental Responsibility.

The Office of the Information Commissioner provides an FOI complaint mechanism and advisory service which is independent, objective and fair, and which balances the competing needs of applicants, agencies and Parliament, subject to the requirements and processes prescribed in the Act. The Information Commissioner has a statutory duty to undertake these functions and the Office accordingly has two service teams – *Resolution of Complaints (External Review)* and *Advice and Awareness*.