



**WESTERN AUSTRALIA**

**Office of the Information Commissioner**

**ANNUAL REPORT 2010-2011**



Office of the **Information Commissioner**

DEAR MR PRESIDENT  
DEAR MR SPEAKER

**ANNUAL REPORT 2010-2011**

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 2011 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

27 September 2011

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## **OVERVIEW**

## 1. OVERVIEW



### 1.1 COMMISSIONER'S FOREWORD

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

The importance of government accountability and public participation in government was recognised by the Supreme Court during the year in a judgment on an appeal under the *Freedom of Information Act 1992* (the Act). His Honour Justice Martin noted that the aims of the Act, which are to enable the public to participate more effectively in government and to make government more accountable to the public, are *the essential bedrock of open, democratic government whose policy importance cannot be overstated*<sup>1</sup>.

***"... one of the biggest challenges for my office in ensuring that the aims of the Act are achieved is to ensure the timely and just resolution of complaints."***

As I have noted in my two previous reports, one of the biggest challenges for my office in ensuring that the aims of the Act are achieved is to ensure the timely and just resolution of complaints. In this regard, I welcome the additional funding made available to my office in the 2011 State Budget. This will allow my office to employ an additional two officers to assist in clearing the backlog of complaints before me. While the current backlog is still well above historical levels, a focus on complaint resolution by my office within its existing resources saw the average age of complaints before me decrease from 223 days to 192 days over the course of the reporting year.

Another positive development is that two of the key recommendations made in my report to Parliament following a review of the administration of Freedom of Information (FOI) in Western Australia<sup>2</sup> are being implemented. The first of these recommended that Ministers may wish to explore with the Department of the Premier and Cabinet (DPC) the option of a more formal shared capability to assist their offices in dealing with FOI applications. DPC is now obtaining additional resources to implement the recommendation. This will provide a comprehensive FOI resource for Ministers which can carry out complete and effective searches for relevant

<sup>1</sup> *Water Corporation v McKay* [2010] WASC 210 per Martin J at paragraph 38

<sup>2</sup> *The Administration of Freedom of Information in Western Australia* 31 August 2010

documents, negotiate with applicants on large applications, consult with third parties and draft notices of decision for review by the relevant Minister. This will assist in addressing problems identified by the review. Second, the Department of Health is currently taking tangible and positive steps to implement my recommendation that health services across the State should further share knowledge and improve the quality and consistency of FOI processing across that very important portfolio.

The year also saw a continuing focus on delivering advice and awareness services to State and local government agencies and to the broader community. The number of training courses and briefings, as well as the total number of attendees at advice and awareness functions, all increased during the year. My office also visited Albany and Bunbury during the year to ensure that agencies and communities outside the Perth metropolitan area have access to these services. I believe that ongoing investment in advice and awareness will pay medium to long term dividends in improving the administration of FOI in our State.

In last year's report I noted that FOI reforms in other Australian jurisdictions could provide opportunities for greater cooperation between information commissioners, which will have benefits for better administration in Western Australia. In this regard I am pleased to say that I hosted the inaugural meeting of the Association of Information Access Commissioners (AIAC) in April 2011, attended by my counterparts from other Australian jurisdictions and New Zealand. The objectives of AIAC include the

sharing of knowledge and resources between Commissioners within the region, as well as cooperating in areas such as the proactive disclosure of government information and general open government initiatives. The association also aims to promote best practice amongst Commissioners to achieve the objectives set out in our respective legislation.

The final issue I wish to draw to the attention of Parliament in this report is the potential impact of the harmonisation of a number of areas of law under the auspices of the Council of Australian Governments (COAG) in areas such as rail safety and heavy vehicle regulation. Such initiatives have a potentially significant impact on FOI rights and obligations across Australia. These impacts need to be carefully considered to prevent information laws and processes from becoming inconsistent, incoherent, inefficient or fragmented. These concerns have been formally raised by my Commonwealth counterpart<sup>3</sup> and I have brought them to the attention of the Western Australian Government.

While significant challenges remain, particularly in ensuring the timely resolution of complaints, a number of welcome developments during the year provide cause for optimism and help to shore up the foundations of the administration of FOI in Western Australia. I look forward to working with my team and with agencies across the State to continue building on these foundations into the future.

Sven Bluemmel  
Information Commissioner

<sup>3</sup> [http://www.oaic.gov.au/publications/submissions/2011\\_08\\_Submission\\_Draft\\_Rail\\_Safety\\_National\\_Law.html](http://www.oaic.gov.au/publications/submissions/2011_08_Submission_Draft_Rail_Safety_National_Law.html)

## 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 Information Commissioner 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 Commissioner is supported by staff in the Office of the Information Commissioner (OIC). The main function of the OIC 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 to be achieved [s.111(4)].

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

- ❖ 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 of accountability and responsibility to agencies.

## RELEVANT LEGISLATION

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

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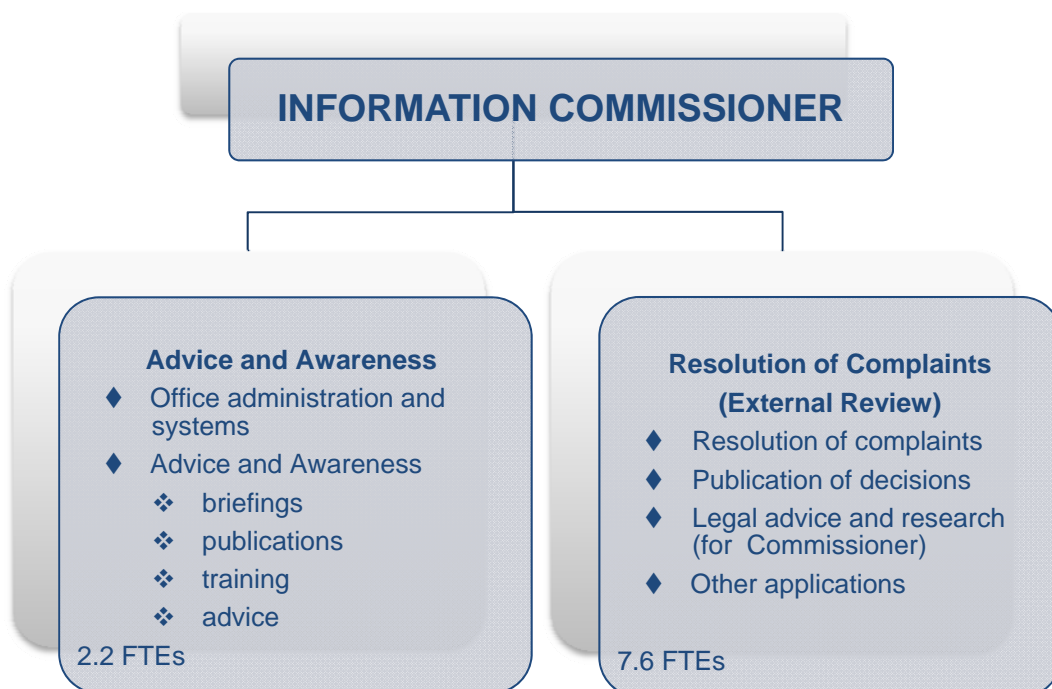


## STAFF



*Standing L to R: Anne Marshall, Principal Legal Officer; Rachel Crute, A/Senior Legal Officer; Kim Bracknell, Information Services Manager; Sven Bluemmel, Information Commissioner; Tony Pruyyn, Senior Investigations Officer; Michelle Fitzgerald, Executive Officer; Lavina Mandy, A/Legal Officer.  
Front row L to R: Grace Grandia, Senior Advisory Officer; Sylvie de Laroche, Administrative Assistant; Vivien Hillyard, Investigations Officer.*

## 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 OIC 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 Commissioner has a statutory duty to undertake these functions and the OIC accordingly has two service teams – *Resolution of Complaints (External Review)* and *Advice and Awareness*.