



WESTERN AUSTRALIA

Office of the **Information Commissioner**

ANNUAL REPORT 2012/2013

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Office of the Information Commissioner

DEAR MR PRESIDENT
DEAR MR SPEAKER

ANNUAL REPORT 2012-2013

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 2013 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

25 September 2013

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1 OVERVIEW

1.1 Commissioner's foreword



Twenty years ago, the passage of the *Freedom of Information Act 1992* changed the relationship between Western Australians and their government. It would be wrong to claim that

government never disclosed information prior to this change. However, it was largely up to government to decide what should be disclosed and when. Since the passage of the Act, all Western Australians have the right to access any government information for whatever reason they wish, subject only to the limitations determined by Parliament in the FOI Act. This has resulted in a tremendous increase in government transparency and accountability.

While the FOI Act has served Western Australians well, there are challenges ahead, particularly where government works with the private and not for profit sectors to deliver public services. In *Re Pisano and Health Solutions (WA) Pty Ltd trading as Peel Health Campus* [2012] WAICmr 24, I determined that the private sector provider of a public health facility is

not an agency under the FOI Act. While public patients in the relevant facility are generally able to access their medical records as a requirement of the contract between the State and the provider, this does not provide the same level of transparency as applies to a public health facility operated by the State.

This year also saw the first time that the Court of Appeal delivered a judgment arising out of a decision made under the FOI Act. In *Apache Northwest Pty Ltd v Department of Mines and Petroleum* [2012] WASCA 167 the Court ultimately upheld a decision to require the disclosure of documents relating to facilities on Varanus Island, which was the site of a gas pipeline explosion in 2008. The Court also provided significant guidance on the interpretation of exemptions under the Act.

The number of applications made to the office for external review of agency FOI decisions increased significantly during the year compared with the previous 12 months. To help ensure the greatest possible efficiency and effectiveness in dealing with the increasing workload, the office undertook a strategic and operational planning exercise to help focus its efforts into the future. One of the major initiatives to come out of this exercise is a

greater focus on resolving complaints through early face-to-face conciliation. A pilot project is currently underway.

A new unit in the Department of the Premier and Cabinet which supports Ministers in dealing with FOI applications has now been operational for over a year. I am pleased to note that it appears to be having a very positive impact on the quality and consistency of FOI decisions made by Ministers.

My office continued its regional outreach program with other accountability agencies, visiting locations in the Pilbara, the Wheatbelt, Bunbury and Geraldton during the year.

Finally I wish to acknowledge the generosity and assistance of the Office of the Queensland Information Commissioner which hosted one of my officers for three days during the year. The purpose of the visit was to gather information about that office's knowledge management and complaints management process and its training and publications program. This was invaluable in informing my office's strategic and operational planning noted above.

Sven Bluemmel
Information Commissioner

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 be achieved [s.111(4)].

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*.

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 to agencies of accountability and responsibility.

Relevant legislation

Freedom of Information Act 1992

Freedom of Information Regulations 1993

1.3 Performance management framework

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.